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Attorneys for Plaintiffs
CORY SPENCER, DIANA MILENA
REED, and COASTAL PROTECTION
RANGERS, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CORY SPENCER, an individual;
DIANA MILENA REED, an
individual; and COASTAL
PROTECTION RANGERS, INC., a
California non-profit public benefit
corporation,

Plaintiffs,

CASE NO. 2:16-cv-02129-SJO (RAOx)

**PLAINTIFFS' ADDITIONAL
MATERIAL FACTS IN OPPOSITION
TO DEFENDANTS CITY OF PALOS
VERDES ESTATES AND CHIEF OF
POLICE JEFF KEPLEY'S MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, SUMMARY
ADJUDICATION**

Case No. 2:16-cv-02129-SJO (RAOx)

PLTFS.' ADDITIONAL MATERIAL FACTS IN OPP. TO DEFTS. CITY OF PALOS VERDES ESTATES AND
CHIEF OF POLICE JEFF KEPLEY'S MOT. FOR SUMM. JUDG. OR, IN THE ALT., SUMM. ADJUD.

1
2 v.

3 LUNADA BAY BOYS; THE
4 INDIVIDUAL MEMBERS OF THE
5 LUNADA BAY BOYS, including but
6 not limited to SANG LEE, BRANT
7 BLAKEMAN, ALAN JOHNSTON,
8 AKA JALIAN JOHNSTON,
9 MICHAEL RAE PAPAYANS,
10 ANGELO FERRARA, FRANK
11 FERRARA, CHARLIE FERRARA,
and N. F.; CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE JEFF
KEPLEY, in his representative
capacity; and DOES 1-10,

12 Defendants.
13
14

Judge: Hon. S. James Otero
Date: September 5, 2017
Time: 10:00 a.m.
Crtrm.: 10C

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

15 Plaintiffs Cory Spencer, Diana Milena Reed and Coastal Protection Rangers,
16 Inc. (collectively referred to as "Plaintiffs") hereby submit these Additional Material
17 Facts in Opposition to Defendants City of Palos Verdes Estates and Chief of Police
18 Jeff Kepley ("Defendants") Motion for Summary Judgment or, in the Alternative,
19 Summary Adjudication set for hearing on September 5, 2017, before this Court:
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1 **Issue #1: Lunada Bay Is A Unique Part Of The California Coast And A**
 2 **Public Beach Owned By The City, And Under A Grant From The**
 3 **State Of California, Is Reserved To The People Of California.**

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
<p>6 107. Palos Verdes Estates Shoreline</p> <p>7 Preserve and specifically Lunada Bay</p> <p>8 constitute an asset of priceless value,</p> <p>9 and exceptional and dramatic beauty.</p> <p>10 Lunada Bay is owned by the City and</p> <p>11 is a world class wave.</p>	<p>107. City Responses to Plaintiff's</p> <p>Separate Statement. Undisputed</p> <p>Material Facts ISO Class Certification</p> <p>[Docket No. 189] Nos. 1 ("Lunada Bay</p> <p>is owned by the City of Palos Verdes</p> <p>Estates and is a public beach") ("Lunada</p> <p>Bay is a unique world class surfing site,</p> <p>and offers many recreational</p> <p>opportunities"), 5; Willis Decl. ISO Opp.</p> <p>to City MSJ, ¶¶8, 9, 10, 11. 15 ("Lunada</p> <p>Bay is a world class wave . . ") and Ex. 4</p> <p>("Palos Verdes Estates Shoreline</p> <p>Preserve constitutes an asset of priceless</p> <p>value." p. 87) (Palos Verdes "has a</p> <p>shoreline of exceptional and dramatic</p> <p>scenic beauty . . .") (p. 115); Barber</p> <p>Depo. 112:18-22, Ex. 263 ("Q: And I'm</p> <p>going to – 263 I'm going to put in front</p> <p>of you, Sergeant Barber. Do you</p> <p>recognize that as being a map of the</p> <p>general Lunada Bay coastal area?</p> <p>A: Yes.")</p>

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
108. The State of California granted Lunada Bay and the rest of the Palos Verdes Estates Shoreline Preserve to the City, but it is reserved for the People of California.	108. Willis Decl., ¶¶8-11.

Issue #2: Plaintiffs Coastal Protection Rangers, Reed And Spencer Have Standing To Seek Equitable Relief Against The City Under Section 1983

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
109. Coastal Protection Rangers (CPR) is California non-profit public benefit corporation whose mission is dedicated to ensuring public access to the California coast.	109. City Response to Plaintiff's Separate Statement of Undisputed Facts ISO Class Certification No. 14 ("The Coastal Protection Rangers, Inc. is a nonprofit dedicated to ensuring beach access and environmental justice. CPR believes all visitors should be able to visit Lunada Bay without fear of attack or vandalism. Undisputed") [Docket No. 189]; M. Slattan Decl. ISO Motion for Class Certification ¶2 [Docket No. 159-6]; A. Apostol Decl. ISO Opp. City MSJ ¶¶2,3.
110. Non-profit coastal advocacy groups like CPR provide important support to the California Coastal Commission.	110. A. Willis Decl. ISO Opp. City MSJ ¶¶3, 4, 5, 6, 7, 11, 12.
111. To CPR, the beach represents freedom, a place to gather with friends, and a place for people to express themselves.	111. M. Slattan Decl. ISO Motion for Class Certification ¶4. [Docket No. 159-6]

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
2		
3	112. To CPR, the California coast is	112. M. Slattan Decl. ISO Motion
4	the largest open space near urban	for Class Certification ¶4. [Docket
5	areas that have too little access to	No. 159-6]
6	recreation, parks, nature and the	
7	outdoors.	
8	113. Beach access is central to CPR's	113. M. Slattan Decl. ISO Motion
9	mission.	for Class Certification ¶8 [Docket
10		No. 159-6]; A. Apostol Decl. Opp.
11		ISO City MSJ ¶¶2, 3, 4, 8, 9, 10,
12		11,14,16.
13	114. CPR board members, members,	114. M. Slattan Decl. ISO Motion
14	and/or volunteers have suffered from	for Class Certification ¶7 [Docket
15	unlawful exclusion by the City at	No. 159-6]; A. Apostol Decl. Opp.
16	Lunada Bay, including exclusion	ISO City MSJ ¶¶4,6,9,10,12,13,14, 16.
17	based on where they live, race and	
18	gender.	
19	115. CPR's members, volunteers and	115. A. Apostol Decl. Opp. ISO City
20	the people it helps include people of	MSJ ¶¶3,6,8,9,10,11, 12, 14, 16.
21	color, people with disabilities, women,	
22	and people of different sexual	
23	orientations who are concerned about	
24	illegal exclusion from the coast.	

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
2		
3	116. CPR has investigated illegal	116. M. Slattan Decl. ISO Motion
4	exclusion by the City of Palos Verdes	for Class Certification ¶¶9,10, 11, 13
5	Estates, and on behalf of its members	[Docket No. 159-6]; A. Apostol Decl.
6	and volunteers wants to remedy	Opp. ISO City MSJ ¶¶3,5, 6, 7, 8, 10,
7	unequal treatment against persons of	11, 12, 14.
8	color, women, the poor, and other	
9	protected categories – and on behalf of	
10	its members and volunteers	
11	specifically desires to address civil	
12	rights issues as they relate to beach	
13	access.	
14	117. CPR has diverted resources to	117. A. Apostol Decl. Opp. ISO City
15	achieve open access for all at Lunada	MSJ ¶15.
16	Bay, and if it were not for the illegal	
17	exclusivity by the City these resources	
18	could be used for other important CPR	
19	projects related to coastal access.	
20	118. The City is causing CPR's	118. A. Willis Decl. ISO Opp. to
21	members and volunteers irreparable	City MSJ ¶4 ("Without judicial
22	harm.	assistance, I am of the opinion that the
23		potential remains that beachgoers are
24		being denied access to Lunada Bay in
25		violation of the law, and, thus, are
26		continuing to suffer irreparable
27		harm.").
28		

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3	119. Diana Reed is a female outsider	119. D. Milena Reed Decl. ISO Motion
4	who has been harassed at Lunada Bay	for Class Certification ¶¶1, 5, 6, 7, 8, 9,
5	with City complicity, and is deterred	10, 11, 17, 18, 19, 20, 21, 22, 23, 24, 25,
6	from visiting Lunada Bay.	26, 27, 28 [Docket No. 159-5]; Franklin
7		Decl., ¶25 Ex. 17 ("fucking sexy
8		baby...want to film it?"; "I seen you and
9		I think I touched myself a little bit"; "I
10		can do whatever I want." Reed Depo.
11		(Vol. II) 204:15-20 ("I witnessed Mr.
12		Johnston moaning towards her,
13		oscillating his body in a sexual manner,
14		you know, other things, but it's hard for
15		me to remember because I was mostly
16		focused on what was happening to me
17		and I was so scared that I, you know, I
18		wasn't thinking very clearly."); Reed
19		Depo. (Vol. II) 207: 1:5 ("I think that I
20		wanted an escort at the time because of
21		the previous incident in January where I
22		was yelled at by the other individual
23		[David Melo]. Q: Okay. What did you
24		want the escort for? A: For safety.");
25		Reed Depo. (Vol. II) 207:21-23
26		("Q: Did you want the escort to go to the
27		fort with you? A: I did want them to
28		

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	escort me there."); Reed Depo. (Vol. II) 208: 9-13 ("I just remember -- yeah, I just remember speaking to the police and requesting someone to escort me. I remember, you know, the idea of doing that, but it's hard for me to remember, you know, anything that was said specifically."); Reed Depo. (Vol. II) 211:18-20 ("Did they tell you they weren't available or did they refuse your request? A: Is there a difference between that?"); Reed Depo. (Vol. II) 300:15-25, 301:1-25, 302:1-7 ("Q: Did you ever see Brant Blakeman do anything besides filming or speaking to you as you told us at the bay area? A: Well, during the incident that occurred on February 13th, it appeared as though he had orchestrated that event with Mr. Jalian Johnston. Q: What specifically did he do that made you think that he had orchestrated that? A: It appeared as though they had planned the event out in an attempt to try to ruin my camera and in an attempt to

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	try to intimidate me. Q: What specifically was done or did you see that caused you to believe that? A: The fact that when they entered the fort it seemed like all of their actions were orchestrated, they immediately rushed towards me. Johnston immediately opened the can of beer and, you know, sprayed it on me and on my camera in what I believe they intended to appear as an accident but to me it felt very intentional. The way that, you know, he was -- he was filming Johnston as though it was like a planned performance it seemed like, you know. The fact that he was holding the camera just right, right next to my face in a way that made me feel threatened or intimidated. Q: Go ahead. A: A lot of the actions at Lunada Bay between the locals all appeared to be orchestrated based on what I've seen and what I've heard in the surf community. Q: Can you give me any specifics as to why you thought the February 13th episode was orchestrated or scripted or somehow

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	created by Mr. Blakeman or with his direction? A: I don't know who planned it. I don't know who planned it but it appeared that they were following a very distinct plan to try to intimidate me and try to ruin my camera. Q: Can you give me any specifics as to why you think that? A: I think that because of the way that that the actions unfolded that I just described."); Reed Depo. (Vol. II) 305:12-24 ("Q: Was Mr. Blakeman doing anything as he entered? A: Yes, as I was saying, he was holding the camera on some kind of tripod device recording, very menacing, threatening look on his face that made me extremely fearful. Mr. Johnston was -- also had a very menacing and fearful expression. The way that they walked and their body language also appeared threatening. They were making big, loud steps and just a lot of heavy, you know, frightening movements that made me feel that they were there in an aggressive and hostile way."); Reed Depo. (Vol. II)

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	307:14-25 ("Yes, Mr. Johnston appeared to be forging a celebration, and, you know, he was raising his voice and saying woo-hoo, you know, L.A. Times, and he was -- as I can assume now, attempting to celebrate the fact that the L.A. Times had published an article about Lunada Bay and it was on the front page that day. And I was unaware of that fact at the time. Q: When you say "forging a celebration," what do you mean? A: What I mean is that they were obviously there to intimidate and harass me, and the way that they wanted to do it, I guess, was to pretend that they were celebrating the fact that the article came out but clearly they were upset about the article."); Reed Depo. (Vol. II) 308: 1-7 ("When you say "rushing towards me," what do you mean? A: By that, I mean I remember him walking, you know, moving towards me quickly, I wouldn't say walking, but moving towards me in an extremely quick and frightening way to where he was in my

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	personal space, very close."); Reed Depo. (Vol. II) 319: 17-25, 320:1-11 ("Q: I wasn't there so I don't know what to ask you except to ask you to tell me what other things you can recall about the episode on the 13th specifically with regard to Mr. Blakeman that you haven't told me about already. You told me that he had a camera, that he took videos, that he looked menacing to you, that he videotaped or whatever? A: Yeah, I remember that he wouldn't stop videotaping me. I think I might have asked him to stop -- I mean, I definitely asked him why they're doing that. I feel like his role was to record 4 rather than to speak and to intimidate through his camera. So I remember him, like I said, getting very close to me and being -- felt like he was right in my face with the camera. I remember asking them why they're filming me and they said they're filming me because I'm sexy and because I turn them on and that was what Mr. Johnston was saying."); Reed Depo.

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	(Vol. II) 321: 13-23 ("Q: What is a menacing expression to you, what does that mean? A: A I mean, he looked like - I mean, he was -- obviously, he was scowling, he was -- his body language conveyed that he was hostile, he -- I mean, they were making -- he was making sexual comments, Mr. Johnston was. And I just felt very frightened like anything could happen, you know."); Reed Depo. (Vol. II) 276:13-25, 277:1-3 ("Q: Now, the pain and suffering that you attribute, how have you experienced pain and suffering? Describe your symptoms with the pain and suffering you suffered? A: I've had loss of sleep -- you mean the entire -- the entire course of events that happened to me at the fort was extremely traumatic, you know, I felt -- felt like I could have even been raped. I mean, it was incredibly frightening, I felt helpless. Just that whole memory of the event has caused me to be fearful and just really affected my piece of mind. Q: Did it cause you

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	to be fearful of going to Lunada Bay after February 13th? A: Of course. Yeah, it caused that as well, hmm-mm. Q: Okay. And you did go to Lunada Bay after that, February 13th; right? A: I did go back. And the reason why is because I don't believe in bullying. I will stand up to bullies. I will do what's right, it's a public beach, and if I don't go then who else will go. And, you know, I just, you know, I don't believe in them bullying me into being fearful of going somewhere that's beautiful and should be accessible to all people."); Reed Depo. (Vol. I), 170:9-25 ("Q: What do you remember about being approached by individual defendants with a case of beer? A: I remember that they approached me very rapidly and I was caught by surprise. I remember that they rushed towards me in a hostile manner. I remember, you know, declining that I wanted to drink beer. I remember being videotaped by Brant Blakeman. I remember there were times when I was

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	being videotaped very close to my face and it felt very intimidating and definitely felt like I was being harassed. And I think that I asked them, you know, why they're videotaping me because it made me very uncomfortable. I remember Mr. Johnston opening the can of beer in a way that sprayed my arm and my camera. I remember him chucking beer and throwing beer cans on the floor. I remember him being very loud and very scary, very intimidating, and acting in a sexual manner."); Reed Depo. (Vol. I) 175:8-14 ("Q: Do you recall trying to leave the fort and being unable to do so because you were blocked? MR. FRANKLIN: Vague and ambiguous. A: I recall them standing in front of me, and the way to leave would be to go, you know, to get close to them. And I do recall attempting to call the police but not having cell phone service.")

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
2		
3	120. Reed's complaint and plea to the	120. D. Milena Reed Decl. ISO Motion
4	City for help were disregarded, and	for Class Certification ¶30. [Docket
5	the City made it hard for her to lodge	No. 159-5]
6	complaints in the first place and asked	
7	her: "Why would a woman want to go	
8	to that beach and the Rock Fort	
9	anyways? There are rocks down	
10	there."	
11	121. After being first harassed, on	121. D. Milena Reed Decl. ISO Motion
12	February 13, 2016, Reed returned to	for Class Certification ¶18 [Docket
13	Lunada Bay and asked the police for	No. 159-5]; <i>see</i> PAMF 119.
14	an escort from the bluffs to the beach	
15	but was told no officers were	
16	available.	
17	122. On February 13, 2016, the day	122. D. Milena Reed Decl. ISO Motion
18	Reed is harassed a second time, (i) the	for Class Certification ¶¶18-27 [Docket
19	City had a cancelled a planned	No. 159-5]; Best Depo. 169:16-25,
20	undercover operation at Lunada Bay	170:1-10, 20-25, 171:1-4, 172:9-25,
21	because it was "leaked" to the Bay	173:1-25, 174:1-5; Kepley Depo. 184:7-
22	Boys the day before, (ii) Reed was	25, 185:1-16. Franklin Decl., ¶25 Ex. 17
23	sexually harassed by Bay Boys Alan	("fucking sexy baby...want to film it?";
24	Johnston and Brant Blakeman, and	"I seen you and I think I touched myself
25	(iii) the day before Bay Boy Michael	a little bit"; "I can do whatever I want."
26	Thiel ██████ the City Manager to not	<i>See</i> , PAMF 119 and 185.
27	hold an undercover operation.	
28		

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
2		
3	123. When Reed finally had the	123. D. Milena Reed Decl. ISO Motion
4	attention of the Chief of Police Jeff	for Class Certification ¶31. [Docket
5	Kepley and Captain Tony Best, they	No. 159-5]
6	said that although they had	
7	photographs of the Lunada Bay Boys	
8	members, they would not allow her to	
9	view the photos because it would	
10	impede the investigation.	
11	124. In response to her desire to	124. D. Milena Reed Decl. ISO Motion
12	return, the City told her to carry a cell	for Class Certification ¶31. [Docket
13	phone and travel in a large group. The	No. 159-5]
14	Chief of Police told her it was not safe	
15	to go to Lunada Bay, that he wouldn't	
16	even tell a man to go down there, and	
17	that he viewed it as a long term	
18	problem.	
19	125. Reed suffers irreparable harm:	125. D. Milena Reed Decl. ISO Motion
20	As an outsider, she is denied access to	for Class Certification ¶¶ 9, 11, 12, 14,
21	a public area granted to the City from	15, 18, 19, 20, 21, 22, 24, 27, 30, 31, 40,
22	the State, and forced to announce her	41 [Docket No. 159-5]; A. Willis Decl.
23	coming in advance only to be	ISO Opp. to City MSJ ¶¶3, 4.
24	harassed. Rather than promote public	
25	access with simple things like a park	
26	bench, seating, trail markers and	
27	maps, trail improvements, and signs,	
28		

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
2		
3	the City's failed response was to make	
4	it hard to file a complaint, and tell her	
5	it is not safe and that she should bring	
6	a cell phone and travel in a group.	
7	126. Cory Spencer is an outsider	126. C. Spencer Decl. ISO Motion for
8	who lives in the inland community of	Class Certification ¶¶1, 2. [Docket
9	Norco, California more than 60 miles	No. 159-4]
10	from Palos Verdes Estates. Like	
11	Reed, he has been harassed by	
12	outsiders with City complicity. He	
13	grew up in La Mirada, more than 30	
14	miles Palos Verdes Estates.	
15	127. Because of its reputation for	127. C. Spencer Decl. ISO Motion for
16	localism, Spencer is afraid to surf	Class Certification ¶¶3, 4, 5. [Docket
17	Lunada Bay.	No. 159-4]
18	128. Supported by other outsiders,	128. C. Spencer Decl. ISO Motion for
19	Spencer decided to address his fear	Class Certification ¶¶8, 9, 10. [Docket
20	and attempt to surf Lunada Bay in	No. 159-4]
21	2016.	
22	129. Upon arrival at Lunada Bay,	129. C. Spencer Decl. ISO Motion for
23	Spencer was intimidated and harassed	Class Certification ¶¶11-31 [Docket
24	as an outsider on land, blocked from	No. 159-4]; Spencer Depo. 39:1-18
25	surfing (in water granted to the City	("A: Let me just say this. Around 2002
26	from the State) and run over in the	or 2003, somewhere in the early 2000s, I
27	water. Even though Spencer had	was almost ecstatic when my police
28		

1 <u>Plaintiffs' Additional Material Facts:</u>	Evidence in Support of Plaintiffs' Additional Material Facts:
<p>2</p> <p>3 given the City advance notice that he</p> <p>4 and other outsiders would be coming</p> <p>5 to use Lunada Bay, the City failed to</p> <p>6 arrive as requested and failed to patrol</p> <p>7 the shoreline near the water.</p> <p>8 Moreover, even though he had been</p> <p>9 purposefully run over by a local and</p> <p>10 attempted to tell a City policeman, the</p> <p>11 City showed no interest in an</p> <p>12 investigation of a crime against an</p> <p>13 outsider, even though Spencer himself</p> <p>14 is a police officer but from another</p> <p>15 jurisdiction.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>chief was looking for volunteers of</p> <p>officers to go surf at Lunada Bay to take</p> <p>care of a problem that supposedly either</p> <p>the police chief or the city at the time</p> <p>wanted to take care of, and I was going</p> <p>to go in the capacity of a police officer;</p> <p>be able to undercover surf in a place that</p> <p>I wanted to surf since I was probably 15</p> <p>years old and take care of a bullying</p> <p>problem. I thought at that time, hey,</p> <p>these guys are going to do it. You know,</p> <p>this is -- this is going to happen, and I'm</p> <p>going to be a part of it. And that was --</p> <p>that was exciting to me. Yeah, I was</p> <p>excited. I thought at that time it was</p> <p>going to be taken care of. But, for</p> <p>whatever reason, that undercover</p> <p>operation, or whatever they were</p> <p>planning on doing with us, was called</p> <p>off; and, again, nothing happened. That</p> <p>was a letdown.”); Spencer Depo. 44:4-16</p> <p>("Q: And 'cause I don't know. I don't</p> <p>understand undercover operations.</p> <p>A: Well, I think the expectation speaks</p> <p>for itself on the undercover operation.</p>

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>You go in undercover expecting that things that have been reported for the last 30 or 40 years would happen to you as an undiscovered outsider; and you, being an on-duty police officer, would be able to make and effect a proper arrest or a citation and send a message that -- when I say, 'we,' meaning 'we' as the Palos Verdes Estates police are not going to tolerate a gang in the water and on the beach, and the problem would go away. Almost instantaneously within a couple weeks this could be cleared up. We would not be sitting here today."); Spencer Depo. 56:5-14 ("A: Let's go back to that. When you see --you question why you can't go there; and, then, you start inquiring in the surfing world why you can't go there, and you hear the stories that have gone on for as long as they have up into that point. You immediately get fearful. You don't want to go somewhere where you're going to get your tires slashed; your windows egged; your property thrown in the</p>

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>ocean. Those were the stories that you get; so, you become fearful right away, right? Or I did."); Spencer Depo. 59:18-21 ("Fearful? Just going there I was in fear. Just driving up the Palos Verdes Peninsula road, you know, or whatever road it is to get up there, you're a little afraid because you've heard stories."); Spencer Depo. 60:2-8 ("I don't know how to answer that any other way than I already did. When you drive up, you -- because of the lure, the stories, you feel fearful of, hey, is this real? Is this -- is this place really like they say it is? Am I going to get my property vandalized? Am I going to get, you know, in some type of confrontation? That's a fear."); Spencer Depo. 103:11-25 ("Q: Did these statements cause fear for you? A: Yeah. Q: Okay. A: Yes. Sorry. Q: Did anything else occur in the 20 minutes that caused fear for you? A: Yes. Q: What was that? A: More -- more of the same statements by a specific individual, who I could identify. I don't</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>know his name. Same things. It was more of a – more of a closer, I guess, encounter with the same language all the way down the trail; jumping into the water; same individual just keep, you know, heckling."); Spencer Depo. 105:12-21 ("A: A very uncomfortable feeling when the -- who I now know -- did not know at the time -- was Defendant Blakeman paddling around myself and Chris and, more specifically, Chris in a very tight circle; blocking Chris from getting any waves; never saying a word; just looking -- staring at both he and I. That was a little weird; fearful. I've never experienced that before in my life in the water like -- kind of like a circling you like a shark. You know, it was weird -- just weird."); Spencer Depo. 106:21-25, 107:1-9 ("Q: Once in the water, on his second wave at Lunada Bay, a member of Defendant LUNADA BAY BOYS intentionally ran Spencer over with his surfboard and sliced open Spencer's</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>hand." Is that true? A: Yes. Q: All right. Which hand was that? A: The right wrist. Q: Okay. A: With about a half-inch scar. Q: Do you mind showing it to me? A: Right there."); Spencer Depo. 108:4-17 ("Q: Well, that's a bad question. How do you know that the person who ran you over with the surfboard intentionally did that? A: I'm not in his brain; but I have surfed for, you know, 30 years, and you can tell when somebody locks eyes with you and is on one path, and they specifically move their board and maneuver their body to make their board go in another path that's directly at you when they could go the more safer, more better part of the wave being closer to the more critical part of the wave, which is more enjoyable to surf than aiming towards somebody paddling out to get back out to the lineup. In my mind, I determined that, hey, this guy tried to run me over."); Spencer Depo. 109:17-22 ("A: With that individual who ran -- just</p>

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		ran me over; start berating me with
4		comments of, you know, 'What are you'
5		– 'What are you fucking doing out here?'
6		I told you to go home. I should have ran
7		you over. Why are you paddling in the
8		sun glare where I can't see you?" And
9		that's it. 'I should have ran you over.'");
10		Spencer Depo. 110:12-25, 111:1-4, 9-25,
11		112:1 ("Q: Did you say anything to the
12		person whose surfboard cut your hand?
13		A: After he made the comment that, 'I
14		should have ran you over,' I says, 'Well,
15		you did,' and I held up my hand and
16		showed him, and that's when he said,
17		you know, 'Why are you paddling where
18		I can't see you? You shouldn't paddle in
19		the sunlight,' stuff like that. Then I kept
20		paddling off. Q: Were you fearful of
21		being further injured after that point?
22		A: That's an understatement. Q: So is
23		the answer yes? A: Yes. Q: Okay. Did
24		you feel that what had occurred to you
25		getting your hand cut and the way it
26		happened was a crime? A: I know it
27		was a crime.... A: The way his
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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>explanation was going down the road of, basically, avoiding taking any responsibility for his actions; blaming it on the sun; blaming, you know, me paddling where I'm not supposed to be paddling -- I was paddling exactly where you're supposed to paddle to avoid injury; to avoid conflict with any other surfers. I was paddling back to the channel, which basically gets away from the critical part of the wave, which is where he should have been surfing when he redirected his path to run me over. You know, in my opinion, yeah, it was a crime. Did I report it? It's going to be with no witnesses there; no police officers in the water, as there could have been; no police officers down on the beach, as there could have been; on the fort, as there could have been; nothing to corroborate my story, it would have been a 'He said ...'; 'He said ...' go nowhere thing."); Spencer Depo. 112:25, 113:1-25, 114:1 ("Q: Did you, at that point, have any fear that the same thing would</p>

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>happen to your friend, Chris?</p> <p>A: Yeah -- yes. Q: Okay. A: It came alive. All those stories of 30 or 40 years just happened. Q: And given that you had that fear, did you consider that in order to avoid it potentially happening to Chris, that, perhaps, you should take some actions as a police officer -- and I think you said that you felt it was a crime -- to prevent that from happening to Chris? [OBJECTION] A: I felt the best plan of action was to stay clear of these guys, especially since they just assaulted us. I've got no radio. I've got no handcuffs. I've got no gun; no bullet-proof vest. I'm not a police officer out there. I'm a citizen; okay? And the best plan of action was to avoid them; and that was almost, I mean, impossible, when you got a guy circling around you -- not the guy that ran me over but they're all -- they all know each other, and here's the guy that just injured me. He knows his buddy is circling my friend; and, so, it's like let's get out of</p>

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	here; so we caught one more wave after that; and, then, we decided that was -- it's getting too crazy out here, and more and more [Bay Boys] started showing up on the fort."); Spencer Depo. 149:7-23 ("We discussed Mr. Blakeman's actions. Other than Mr. Blakeman's actions, did you witness any other incidents of the Lunada Bay Boys threatening or taunting surfers that day in February 2016? MR. FRANKLIN: Asked and answered. THE WITNESS: Well, I mean, how do I know who's doing the taunting and threatening when it could be all of them, when they're on their phones, and more and more groups, you know, show up to kind of put this stranglehold on the area, in my opinion? That's taunting and threatening in itself when you have a little goat trail one way to go down there, and you've got two groups of 15 to 20 on each end, and you got a guy going around with a selfie stick and a camera, people -- people yelling at you to fucking get out of there; 'Why are you

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	here? Go home. Don't surf here.' I don't know who they are specifically."); Spencer Depo. 125:10-25, 126:1-25, 127:1 ("Q: Yes, or anything that happened to you that day? A: I did not request a formal police report, no. I did not. Q: Okay. Did you communicate to anybody at the City of Palos Verdes Estates Police Department with regard to what occurred to you that day at Lunada Bay? [OBJECTION] A: Yes. Q: Okay. When was that? A: So, shortly after getting changed, I noticed the group of police officers standing to my south talking with what appeared to be another group of newly-formed Bay Boys. So, the bay is a bay. There's a north and a south end. The south group had, you know, trucks and cars and guys standing kind of huddled around in a group of guys, and the police officers were kind of towards the south. They weren't right up next to the group. And I did notice that a couple of police officers appeared to be talking with a few

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	members of the group; and, so, I made a point, because there was, in my opinion -- and I don't know if it was directed by my contacts with the captain or whatnot, but I noticed the group of police officers; so, I personally wanted to go over and tell them, you know, 'Hey, thanks for showing up,' you know. 'We appreciate it.' You know, and the one younger officer -- I don't know his name. I didn't get any of their names. I, basically, you know, told him what happened to me down there, you know; showed him my hand and -- and I told him, I says, you know, 'The guy is going to claim sun glare and whatnot.' I just didn't want to -- I knew where it was going to go. 'He said ...'; 'He said ...'; and, no, he [the officer] didn't offer to take a report. You know, he didn't ask me to point anybody out. I know you're going to ask all these questions; so, we'll just cut to the chase. Q: He did not offer to take a report? A: Right."); Spencer Depo. 187:22-25, 188:1-9, 188:22-23

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	("Q: With regard to the pain and suffering that you allege, can you describe how you have suffered that pain and suffering? A: Yeah, it's kind of a letdown. You just feel sad that, you know, things that maybe you'd hoped as a human that really weren't happening down there, actually, when they did happen to you, kind of -- don't know. I don't want to say a depression 'cause -- but just a sadness, you know, that, hey, it actually happened; and kind of suffered, in the sense of, you know, it just kind of a -- it's kind of a bummer that it happened. You know, I'm -- in my sense, I'm suffering that I'm not able to go enjoy a place that I have a God-given right to go enjoy without being run over; called names; told to leave; so, in that sense, yeah, that's a suffering to me, I mean..... Q: Did you experience any loss of sleep? A: Yes."); Spencer Depo. 193:10-25 ("Q: Do you attribute any of those specifically to the actions of Chief Kepley? A: Yes. I'm disappointed in

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>him. I'm disappointed that him and his department are not taking care of the problem, yes. Q: And you're disappointed because Chief Kepley has not eliminated the problem, or do you mean something else by taking care of it? A: Yes, eliminated the problem. Q: All right. You would agree that extra patrols were provided in January and in February of 2016 when you asked for them; right? A: Wholeheartedly agree. MR. FRANKLIN: Vague and ambiguous; calls for speculation; move to strike. Q: Okay. Go ahead. And what are those? They haven't -- here's the deal. They haven't provided access to an area that is popular for a recreational sport for the public to enjoy. They haven't provided any signage; notifications on what to do if there's any type of problems. There's nothing down there except a set of rocks that divide the asphalt from the dirt. They're very ineffective in providing access down there, signage, which, in turn, would</p>

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
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3		automatically make it easy to patrol and
4		enforce laws and things that go on down
5		there. And let me just say they had an
6		opportunity to go through the permitting
7		process. They've chose to tear down the
8		fort when they could have permitted it.
9		Whatever they want to do, but just make
10		it accessible to any human being that
11		wants to go enjoy it; not let it be
12		controlled by a bunch of pack animals
13		that are acting like bullies. It's crazy.");
14		Spencer Depo. 274:3-10 ("Q: What is it
15		about right now that you don't feel
16		comfortable about? A: I don't feel the
17		problem has been addressed by the
18		police; by the city. I believe that there's
19		still Bay Boy members that are going to
20		be there, and I don't want to get into any
21		type of confrontation.")
22	130. Given the long-established	130. C. Spencer Decl. ISO Motion for
23	custom and practice of discrimination	Class Certification ¶¶4, 5, 26 [Docket
24	by the City against outsiders, Spencer	No. 159-4]; A. Willis Decl. ISO Opp. to
25	is afraid to return to Lunada Bay to	City MSJ, ¶¶5, 12; <i>see</i> PAMF 129.
26	recreate in a public area.	

Issue #3: Palos Verdes Estates Has A Long-Established Custom Or Practice Of Unlawful Exclusion Of So-Called Undesirables From Its Boundaries, And Otherwise Discouraging Undesirable Outsiders From Coming To The City.

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
131. As community founded in 1923, Palos Verdes Homes Association deed restrictions barred people of color from the City. The Palos Verdes Home Association did not repeal the illegal deed restriction until 2000, and even after doing so, it still handing out copies of its restrictions with the illegal provisions merely "whited out."	131. A. Apostol Decl. ISO Opp. to City MSJ ¶ 7; RJN ¶ 4; Dahlerbruch Depo. (11/18/16) 41:1-10; Dahlerbruch PMK Depo. (7/13/17) 12:20-25, 13:1-21.
132. The City, took no action requiring the Palos Verdes Home Association to repeal the illegal deed restriction, nor did it pass a resolution or take other action condemning the illegal restriction.	132. Dahlerbruch Depo. (11/18/16) 41:16-19, 43:13-21; Dahlerbruch PMK Depo. (7/13/17) 14:5-19.
133. The Palos Verdes Homes Association still enforces deed restrictions in the City, and all homeowners in the City must abide under its jurisdiction.	133. Dahlerbruch Depo. (11/18/16) 40:5-7.
134. The Homes Association pre-dates the City, works closely with the	134. Dahlerbruch Depo. (11/18/16) 102:23-25, 103:1-10 ("Q: And the

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3	City, and is located adjacent to City	shoreline, does it wraparound even the
4	Hall in an adjoining building.	areas where there are homes around the
5		base of the bluff; that's my understanding
6		is that there's some shoreline at the base
7		of the bluff that the City park actually
8		wraps around between the bluff and
9		the - A: I couldn't tell you that.
10		Q: Who would know that at the City
11		A: Palos Verdes Estates Homes
12		Association. Q: They would know that;
13		and why would they know that?
14		A: They have the deeds that identify the
15		actual lot lines and parameters of all the
16		properties.") Dahlerbruch Depo.
17		(11/18/16) 45:17-20 ("Q: So, is the
18		Palos Verdes Homes Association, do
19		they have oversight over restrictive
20		covenants; is that fair? A: Yes.")
21		Dahlerbruch Depo. (11/18/16)
22		103:17-25, 104:1-2) ("Q: If someone
23		wanted to define City owned open space,
24		how would they do that? A: What do
25		you mean by define? Q: I'd like a tour
26		of Palos Verdes Estates' open space,
27		Mr. Dahlerbruch, can you tell me does
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		the City have a map where I can go visit?
4		A: We would probably send them over
5		to the Homes Association to look at their
6		original documents. Q: And the Homes
7		Association they would have the original
8		deeds too? A: Correct.") Best Depo.
9		241:25, 242:1-16; Placek Depo. 69:20-
10		24, 144: 4-11 ("Q: Have you ever had to
11		direct someone to the Homes
12		Association or you don't do that, it's a
13		different number? A: It's a different
14		number. The number would be provided
15		to them. Q: Do you have the number?
16		A: I believe I would provide the number
17		to City Hall, and they can transfer
18		internally."); P. Neushul Decl. ISO
19		Motion for Class Certification ¶7
20		[Docket No. 184-1] ("[T]he City of Palos
21		Verdes Estates had a covenant that
22		forbade home owners to sell or rent a
23		house to anyone who was not white or
24		Caucasian or to allow African-
25		Americans on their property, with the
26		exception of chauffeurs, gardeners and
27		domestic servants.")
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3	135. Many Palos Verdes Estates	135. A. Akhavan Decl. ISO Motion for
4	residents want a segregated	Class Certification ¶15 [Docket No. 171]
5	neighborhood.	("In my experience as a longtime Palos
6		Verdes Estates resident, many of my
7		neighbors enjoy the exclusive nature of
8		our neighborhood and like it segregated.
9		I believe that many residents do not want
10		people coming to our neighborhood.")
11	136. To deter outsiders away from its	136. Siounit Decl. ¶6 ("Beyond Lunada
12	streets and beaches, the City has	Bay, I observed unfair treatment against
13	targeted outsiders with unfavorable	other visitors to the City by police
14	treatment for traffic citations, parking	officers, which started upon entry into
15	tickets, and towed vehicles.	the City."); Siounit Decl. ¶7 ("On one
16		occasion around 2010 or 2011, the
17		Officer that I was on patrol with
18		observed a Hispanic man driving a
19		pickup truck that appeared to be used for
20		gardening. The Officer said to me, 'I
21		guarantee that guy has no license and is
22		an illegal from Mexico.' This was
23		enough for the Officer to pull this man
24		over.... The Officer made it clear to me
25		that he did not like Hispanic or African
26		American people in the City, and that he
27		liked to profile people. And, the Officer
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		laughed about impounding the work
4		truck."); Siounit Decl.¶9 ("When I
5		worked for the City, I also observed a
6		different Officer search for non-resident
7		cars that were parked illegally so he
8		could have them towed."); Siounit Decl.
9		¶12 ("In discussions with some of my
10		fellow officers I learned that some
11		residents did not want an African
12		American police officer patrolling their
13		city."); Siounit Decl.¶17 ("In my almost
14		five years working as a reserve police
15		officer for Palos Verdes Estates, I came
16		to believe that certain officers make
17		every effort to discourage non-residents
18		from visiting the City, including by
19		looking the other way when residents
20		like the local surfers break the law.")
21		Claypool Depo. 145:5-22 ("I was pulled
22		over by a Palos Verdes police officer for
23		nothing, out of the blue, and I was
24		coming from a job estimate or a job that
25		that I was on. He asked me for my
26		license and registration and asked me
27		what I was doing there and there was no
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1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
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3		reason – he didn't give me any reason to
4		pull me over or nothing. He just asked
5		me what I was doing there and didn't
6		write me a ticket. Went back to his car
7		and ran my plates and said, okay, on
8		your way. But halfway between by
9		window and his car, he says, fix that
10		trailer hitch. It's [the ball] blocking your
11		license plate.").
12	137. The City stated that it has data	137. Best Depo. 127:14-25, 128:1-25,
13	on traffic citations issued to non-	129:1-13
14	residents versus residents and that	
15	statistics are readily available, but its	
16	30(b)(6) ¹ deponent did not know the	

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20 ¹ The City designated Captain Tony Best as the Person Most Knowledgeable Under
21 30(b)(6) to testify on behalf of the City for the topics of (1) Beaches and Surfing
22 within Palos Verdes Estates, (2) Policing within the City, and (3) Non-
23 Discrimination Efforts within the City as it Relates to Policing. Best Depo. 9:10-25,
24 10:1-25, 11:1-5. Captain Best has worked for the Palos Verdes Estates Police
25 Department for 21.5 years, and has served as a Community Services Officer, Patrol
26 Officer, Motor Officer, K-9 Officer, Professional Standards Sargent, Watch
27 Commander Sargent, Patrol Captain, Support Services Captain, and Interim Chief of
28 Police. Best Depo. 11: 10-25, 12:1-3 16:16-24; 17:3-12; 19:11-17; 20:8-13; 23:23-
25, 24:1-4; 25:23-25, 26:1-5. While understanding his role as the City's 30(b)(6)
designee, Captain Best said he did not do talk to others or do research to familiarize
himself with 30(b)(6) topics before the deposition, including topic of localism. Best
Depo. 248:5-16.

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
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3	exact answer and refused to provide	
4	an estimate.	
5	138. The City said that data is readily	138. Best Depo. 130:13-22.
6	available on the number of traffic	
7	citations issued to persons of color	
8	versus Caucasians, its 30(b)(6)	
9	deponent did not know the exact	
10	answer and refused to provide an	
11	estimate in response to this question.	
12	139. For at least 10 years, outsiders	139. Siounit Decl. ¶8; Barber Depo.
13	who dare to come to Palos Verdes	241:16-25, 242:1-25; 243:1-25.
14	Estates risk having their vehicle towed	
15	by a towing company owned by a City	
16	police officer, Robert Vanlingen.	
17	140. After towing an outsider's	140. Siounit Decl. ¶11.
18	vehicle, the police would leave them	
19	stranded without a way to get home.	
20	141. Similarly, on one occasion,	141. Siounit Decl. ¶10.
21	when an outsider was stranded	
22	because he had run out of gas an	
23	officer responded by saying "You	
24	should have thought about that before	
25	you left your town."	
26	142. Reserve Officer-owned	142. Best Depo. 179:17-25, 180:1-25,
27	Vanlingen towing company and the	181:1-25, 182:1-25, 183:1-25, 184:1-7;
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1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
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3	City profit from towing outsiders'	Placek Depo. 59: 4-17, 62:3-9; Barber
4	vehicles.	Depo. 243:15-24.
5	143. Chief of Police Kepley did not	143. Kepley Depo. 250:5-23.
6	know Vanlingen Towing is owned by	
7	a reserve officer, but says it would	
8	cause him concern if it turned out to	
9	be true.	
10	144. The City of just 13,500	144. City Response to Plaintiff's
11	residents has its own 24-hour seven-	Separate Statement of Undisputed Facts
12	day-per-week city jail.	ISO Class Certification Nos. 3 and 4
13		[Docket No. 189].
14	145. The City averages between 350	145. Best Depo. 205:25, 206:1-25,
15	and 400 bookings into its city jail each	207:1-14; Placek Depo. 49:12-18, 50:13-
16	year.	25, 51:1-10.
17	146. In its deposition, the City stated	146. Best Depo. 207:15-25, 208:1-10;
18	that it had data on bookings of non-	Placek Depo. 51:19-22.
19	residents versus residents available,	
20	but even though its 30(b)(6) witness	
21	had worked for the City for 21.5 years	
22	and was the Captain who oversaw jail	
23	operations, the City refused to	
24	estimate what percentage of jail	
25	bookings are residents of the City	
26	versus non-residents (outsiders).	
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1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
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3	147. In its deposition, the City	147. Best Depo. 208: 11-25, 209: 1-25,
4	30(b)(6) witness refused to estimate	210:1-8; Placek Depo. 52:8-21.
5	how many bookings in the City jail	
6	involve persons of color versus	
7	Caucasians.	
8	148. Nationwide, Bureau of Justice	148. Franklin Decl., ¶ 24; RJN, ¶3,
9	incarceration rates in county and city	Ex. C, Bureau of Justice Statistics, Jail
10	jails is 230 inmates per 100,000	Inmates in 2015.
11	residents.	
12	149. Residents of Palos Verdes	149. Siounit Decl. ¶12 ("In discussions
13	Estates have objected to having	with some of my fellow officers I
14	African American officers on patrol.	learned that some residents did not want
15		an African American police officer
16		patrolling their city.")
17	150. Since incorporation in 1939, the	150. Best Depo. 239:24-25, 240:1-10;
18	City has had just two African	Barber Depo. 78:2-7.
19	American police officers. Both were	
20	terminated.	
21	151. Among the two African	151. Best Depo. 237:1-13 (the Chief
22	American officers since 1939, Captain	"used that with everybody" and the
23	Kevin Scroggins was terminated after	phrase was "buddy boy), 237:14-25, 238:
24	he complained the Chief called him	1-14 ("And the two officers who were
25	"boy" and that at a retirement party	white officers not in black painted face
26	City police projected a slide of a white	with a noose around the other white
27		officer's neck...it was a negative taken of
28		

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3	officer with a noose around his neck	the actual photo...so black was white,
4	and as African American.	and white was black."); Barber Depo.
5		78:21-22 (That ["buddy boy"] was a
6		little name for, like, every male officer
7		there."); Barber Depo. 80:4-14 ("No, I
8		think Strahan [the retiring Sergeant] was
9		maybe in the picture, but it wasn't – from
10		what I heard, it wasn't black-faced.
11		Somehow they got the negative of the
12		picture and produced that as being black
13		face, and when you see a negative of a
14		photo, it may appear like that, so that's
15		all I know about that....I remember it
16		was something with a noose around the
17		neck of somebody, but I don't know.");
18		Kepley Depo. 122:19-25, 123:1-2
19		("Q: Of the 25 full-time sworn officers,
20		how many are woman? A: Two.
21		Q: And how many are African
22		American? A: None. Q: How many
23		are Latino? A: Of all the officers?
24		Q: Just of the 25. A: Okay, I don't
25		know the number.")
26	152. In 1995, Bay Boy Peter	152. RJN, ¶2, Ex. B; Franklin Decl.¶¶
27	McCollum used a racist comment to	21,23.
28		

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
2		
3	Los Angeles Times to explain why the	
4	Bay Boys exclude others: "We	
5	protected this beach for years. This is	
6	why. So we can have driftwood on	
7	the beach rather than Kentucky Fried	
8	Chicken boxes. If the beach opened	
9	up it would be packed with low	
10	riders....the rocks would be marked	
11	with graffiti."	
12	153. Veteran City police officers had	153. Barber Depo. 184:22-25, 185:1-9
13	knowledge of McCollum's	("Q: Well, of course, you heard about
14	"protective" actions toward outsiders	Mr. McCollum, who said something
15	and persons they viewed as	similar to that? A: Well, yeah, okay,
16	undesirables coming to Lunada Bay:	that's the other case, yeah, but besides
17	"You're not surfing here again, got it?	that, nothing."); Hagins Decl., ¶¶3, 6 and
18	Got it? You got it son? I'm not	7; RJN, ¶¶1, 2, Exs. A and B; Franklin
19	touch'n no one. Nothing. But you	Decl.¶17 EX. 16,¶¶1819.
20	won't surf here again. Fuck that.	
21	Fuck you guys. I've been here too	
22	long for this shit."	
23	154. Beach communities in Los	154. P. Neushul Decl. ISO Motion for
24	Angeles County have a long history of	Class Certification ¶7 [Docket No. 184-
25	discriminating against African	1] ("[E]xclusionary practices towards
26	Americans.	African-Americans extended to the
27		beach. In Southern California, for
28		

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
2		
3		example, cities took measures to keep
4		African-Americans from the
5		beach....eminent domain [was used] to
6		evict African-Americans from a
7		beachfront neighborhood known as
8		Bruce's Beach. Given the hostility
9		displayed towards them elsewhere,
10		African-Americans began surfing at a
11		polluted beach in Santa Monica, which
12		later became known as the Ink Well.
13		Back in the 1970s, as today, few
14		African-Americans surf. In fact, 58
15		percent of African-American children do
16		not know how to swim, compared to 31
17		percent of white children...")
18	155. During the first Lunada Bay	155. C. Taloa Decl. ISO Motion for
19	Martin Luther King, Jr. Day event on	Class Certification ¶17 [Docket
20	January 20, 2014, with City police	No. 159-10].
21	present, a native Hawaiian (and later	
22	Coastal Protection Ranger volunteer)	
23	Christopher Taloa was told by a local	
24	wearing blackface and an afro wig:	
25	"You don't pay enough taxes to be	
26	here."	

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3	156. When Taloa attempted to surf	156. C. Taloa Decl. ISO Motion for
4	Lunada Bay, he was asked: "Who are	Class Certification ¶18 [Docket No. 159-
5	the black guys on the cliff?" And then	10]; Taloa Depo. 299:18-25, 300:1-5
6	he was told by a local surfers that they	("Q: And then other than what people
7	owned the local police and judges.	have told you, are you personally aware
8	Taloa was threatened with this: "'I'm	of what you call connections between the
9	going to have you arrested and have	Lunada Bay Boys and the Palos Verdes
10	you f*#@#&% in the ass by a black or	Estates Police Department? A. <u>Just</u>
11	Mexican in the holding cell."	<u>when I was told I was going to get raped</u>
12		<u>in the butt.</u> Q: Yes. That's unpleasant.
13		Mr. Haven: So stipulated. A. I don't
14		doubt it."); Taloa Depo. 306:11-17 ("I
15		don't know who's real and who's not so
16		I'm very cautious about where I'm going
17		and what I'm approaching. I don't want
18		to be down some cliff and get arrested
19		and thrown in a holding cell like that.
20		That was the scariest SOB-ish thing I've
21		ever heard and was scared sideways on
22		that."); Taloa Depo. 298:15-25, 299:1-14
23		("A: My friends and I began researching
24		Lunada Bay localism and police
25		department. <u>I had heard that some Bay</u>
26		<u>Boys had connections in the police</u>
27		<u>department and that some police officers</u>
28		

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		were racist. On December 2000 and –
4		Q: You can stop. Just the first sentence.
5		Thank you. A: Okay. Q: So again,
6		<u>where did you hear the Bay Boys had</u>
7		<u>connections to the police department or</u>
8		<u>that officers were racist?</u> Who did you
9		hear that from? A: <u>Several individuals</u>
10		<u>who tried to surf up there.</u> Q: Do you
11		have names? A: I can give you a Dave
12		Moore, a Greg Gonzales, Christ
13		Peterson, the Guardian, and Dennis
14		Martinez, and a couple of the guys that
15		surf in the Manhattan Beach area, body
16		boarders and surfers. I wish I could give
17		you all the names. Q: Okay. A: It was
18		a random consensus of a lot of
19		individuals saying don't go up there,
20		black flag. Q: Saying don't go up there
21		because of the police? A: It was a tie in
22		between both [the police and the Bay
23		Boys]; Taloa Depo. 301:4-19
24		("Q: Correct me if I'm wrong but you
25		described him as telling him – they're
26		telling him those were good cops?
27		A: He didn't feel that comfort from the
28		

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>cops. Q: Oh, he didn't? A: He did not feel the comfort from the cop. The cop told him – from what I was told, the cop told him, oh, he asked the police officer because he paddled his kayak all the way out there from Redondo. He didn't want to drive up there. He was worried about his car. So he took his kayak. Parked the kayak out there. Started piling [sic] [paddling] in inward and he asked the cop on the boat if it was okay to surf and he said, we'll, we'll see how you get along with the locals and I saw him. I couldn't believe that anybody showed up [to the 2014 Martin Luther King Day protest]. I was so happy. So happy they showed up. I felt like a donkey myself and he was shadowed by a stand up paddler and the guys just kind of right in front of him and the police boat circled him. Circled, I don't mean like circles but like around him and all the way till he going in more and then he had another group of guys paddle over to him and then he went all the way to the</p>

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
2		
3		beach. He just went in."); Taloa Depo.
4		311:7-18 ("Q: So each time you've gone
5		to Lunada Bay, you've either called the
6		police yourself to let them know you're
7		going to be going or ahead of time or
8		you've had someone act on your proxy
9		and call on your behalf? A: <u>One of us.</u>
10		<u>If we all were going out, one of us has to</u>
11		<u>call.</u> Q: Okay. A: We need to make
12		sure we're safe and legal.")
13	157. In an effort to deter outsiders,	157. J. Wright Decl. ISO Motion for
14	local surfers direct pejoratives at them	Class Certification ¶13 [Docket No.
15	like "kook," "gook," or "fucking	159-9]; R. Pastor Decl. ISO Motion for
16	faggots."	Class Certification ¶5 [Docket No. 175]
17		("Get your fucking brown ass out of
18		here.")
19	158. City admits few persons of	158. Best Depo. 212: 17-25, 213:9-25,
20	color and few others in protected	214:1-25 (over 21.5 years, aware of two
21	categories use Lunada Bay.	occasions of African Americans using
22		Lunada Bay); Barber Depo. 259:19-25,
23		26:1-5 ("Q: How frequently have you
24		see[n] African-Americans use Lunada
25		Bay beach? A: Very rarely. Q: How
26		about in Palos Verdes Estates generally?
27		A: Rarely. Q: How about Latinos? Is it
28		

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
2		
3		that a common experience to see Latinos
4		using Lunada Bay? A: Not Lunada
5		Bay. Q: How about other beaches in
6		Palos Verdes? A: Some other ones.
7		Q: Which ones? A: They use Malaga
8		Cove or Rat Beach a lot.").
9	159. City states in its observation	159. Best Depo. 215:2-5.
10	fewer woman use Lunada Bay than	
11	men.	
12	160. City states it has never seen a	160. Best Depo. 215: 7-24.
13	person that uses a wheelchair using	
14	Lunada Bay.	
15	161. During second Martin Luther	161. A. Apostol Decl. ISO Opp. City
16	King, Jr. Day celebration, which	MSJ ¶¶ 11,12,13; Claypool Depo.
17	Plaintiff Coastal Protection Rangers	116:12-25, 117:1-25, 118:1-25, 119:1-
18	sponsored on January 16, 2017,	25, 120:1-25; 121:1-25, 122:1-3.
19	associates of the Bay Boy's	
20	endangered event participants. And	
21	when event participants complained to	
22	the police, the police made it difficult	
23	on them and acted uninterested.	
24	162. The California Coastal	162. A. Willis Decl. ISO Opp. City
25	Commission is concerned about	MSJ ¶¶ 5, 6, 7, 12.
26	impediments to people from inland	
27	communities using the coast,	
28		

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
providing coastal experiences to lower-income as well as impediments to other underserved populations, improving barriers-free access to persons with disabilities, and mitigating discriminatory impacts to other protected-category beachgoers.	

Issue #4: Palos Verdes Estates Admits It Does Not Want Outsiders Coming To The City.

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
163. Chief of Police Timm Browne, who was the Chief of Police of Palos Verdes Estates from 1998-2004, admits exclusive history of City and that residents do not want outsiders in the City.	163. Best Depo. 124:22-25, 125:1-25, 126:1-25, 127:1-13 ("In 1995, there were some incidents actually provoked by outsiders who brought news crews with them. Umm, they had it planned and then provoked incidents that are actually captured on local television news spots. People here do not like outsiders in general. Umm, I mean, they pay a price to live here. Umm, they have beautiful views of the ocean from most of the homes in the City. Umm, so, uh, they are protective of their community as a whole, umm, I mean surfers or non-surfers."; Franklin Decl. ¶17, Ex. 16, ¶¶ 18, 20.
164. In the City, the Chief of Police speaks for it in terms of all police-related issues.	164. Best Depo. 27:18-25, 28:1-6; 30:5-15; Franklin Decl. ¶29, attaching City Doc. No. 152 [REDACTED] [REDACTED] [REDACTED] "CONFIDENTIAL", City Doc. No. 185,

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		7087 to 7096. [REDACTED]
4		[REDACTED]
5		[REDACTED]
6		[REDACTED]
7		[REDACTED]
8		[REDACTED]
9		[REDACTED]
10		[REDACTED]
11		[REDACTED]
12		[REDACTED]
13		[REDACTED]
14	165. City 30(b)(6) ² witness on the	165. Repp Loadsman Depo. 26:21-25,
15	City's coastal programs admits the	27:1-8 ("Q: Do you recall, was there a
16	Planning Commission has declined	resident and I'm trying to – was it a
17	certain Coastal Commission	parklands committee member or a
18	recommendations, and that comments	resident that may have sad we don't want
19	include a reluctance and not wanting	to be too welcoming in Lunada Bay. Do
20	to be "too welcoming" to outsiders.	you recall that? A: I don't remember
21		exactly who said something similar to
22		that but I know a number of residents did
23		not like the idea of having the boulders
24		[for seating] there....I think it's basically

26 ² The City designated Deputy City Manager Sheri Repp Loadsman as the person
27 most knowledgeable on the City's local coastal program, the Coastal Act, and
28 certain areas covering the city's beaches and surfing.

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	the consideration of loitering."); Repp Loadsman Depo. 9:7-20 ("Q: Are there some things in beach and surfing 4 that you're knowledgeable about? A: I'm familiar with the posting on the city's website. I'm familiar with various access points and recreational opportunities on the beaches. Limited familiarity with surfing beaches. No knowledge on the surfers. No knowledge on the police officers. Knowledge about the city's coastal regulations. Limited knowledge on training for the police officers. Knowledge on the historical and current unpermitted structures along the coastline. I do have information on the patio, the rock fort on Lunada Bay. Familiar with communications with the Coastal Commission. I kept wanting to say communication. And then familiar with some communication with the Coastal Commission as well."); Repp Loadsman Depo. 31:14-25, 32:1-2 ("Q: Has the city done any investigation in terms of how long the rock fort

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	structure had been in its current condition prior to demolition? A: Well, when you use the term, current condition, it's been modified over the years. Q: Can you tell me how the city understands it's been modified over the years? A: We've seen historical photographs. In fact, I've looked at a lot of photographs so I've seen it basically transform from a fairly simple platform and ultimately a bench being added, then a shade structure, then a table, a barbecue, then an annex. Then the annex got a shade structure, right. So, it just seemed to continue to grow."); Repp Loadsman Depo. 33:8-14 ("Q: And did the city do any investigation in terms of who may have modified or built that structure over the years? A: Oh, there were a lot of questions asked and, you know, it was probably a team effort and it was probably many people over many years because it looks like the structure was at least over 30 years old."); Repp Loadsman Depo. 50:22-25, 51:1-25,

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		52:1-9 ("Q: In terms of the process to
4		remove the rock fort, was that bid out?
5		A: Yes. Q: Were there many
6		responders to that request for proposal?
7		A: Gosh, I don't remember how many
8		responders there were, but that was
9		handled through engineering. Q: Do
10		you remember the name of the company
11		that responded to that? A: Oh, good
12		question. No, I don't. I remember
13		watching. Q: I saw a video.
14		A: Helicopter was interesting. Q: Yes.
15		Do you recall, related to that, I
16		understand some of the contractor's
17		equipment was vandalized or destroyed
18		or do you have that understanding or
19		would that have come to you? A: Yes,
20		that is my understanding. I actually saw
21		it. Q: And what had happened? A: The
22		generator had been lowered to the
23		shoreline and somebody had decided to
24		set it alight. Q: So, sounds like there
25		was an arsonist that burned this
26		generator? A: Yeah, sounds like a little
27		bit of vandalism going on. Q: Do you
28		

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
2		
3		have any information on whether they
4		determined who had done that? A: No.
5		Q: Was there any other vandalism to the
6		contracting company's equipment,
7		whether it be cars or -- that you're aware
8		of? A: I think there was another piece
9		of vehicle that I think was scratched and
10		I remember the vandalism primarily to
11		the generator because that was the big
12		ticket item. Q: Was it destroyed?
13		A: Likely.")
14	166. Admission by Catherine Placek,	166. Placek Depo. 87:23-25, 88:1-25,
15	a Community Services Officer for	89:1-24 ("We know all of them. They
16	Palos Verdes Estates, that locals	are infamous around here. They are
17	within the City called the Bay Boys do	pretty much grown men in little mens'
18	not want outsiders using Lunada Bay	mindset. They don't like anyone that's
19	and that if an outsider is	not one of the Bay Boys surfing down
20	uncomfortable facing the locals they	there. It literally is like a game with kids
21	should go somewhere else.	on a schoolyard to them. And they don't
22		want you playing on their swing set.
23		But, you know, it is what it is. <i>If you feel</i>
24		<i>uncomfortable, you know, then don't do</i>
25		<i>it.</i> "); Placek Depo. 84:23-25, 85:1-8
26		("My statement [in the Guardian video]
27		was geared towards the subjects [Bay
28		

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	Boys] mindset...I can't change someone's mindset if they want somebody else not to be there."), Placek Depo. 95:18-25, 96:1-9; 97:17-21.

Issue #5: Lunada Bay Is "Inexplicably" An Underutilized Los Angeles Beach: Lunada Bay Should Have Far More People From The Outside Using It Given Its Proximity To Densely Populate Los Angeles, And Illegal Exclusion Is A Reason Few People Are There.

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
167. Outsiders avoid Lunada Bay because of the Bay Boys' successful campaign to exclude them and City complicity in the problem and, but for this deterrent, Lunada Bay would otherwise have more people using it.	167. P. Neushul Decl. ISO Motion for Class Certification ¶18 [Docket No. 184-1] ("Because of its reputation, most non-City-residents and visiting surfers avoid Lunada Bay. This is because of the Bay Boys' efforts to discourage visitors from coming to Lunada Bay is a deterrent. Indeed, while it's a prized wave, Lunada Bay is known to only have a few surfers using it."); A. Willis Decl. ISO Opp. to City MSJ ¶5 ("My staff have received complaints about localism at Lunada Bay, and that beachgoers are deterred from visiting out of fear for safety to themselves, their families and friends, and their property."), ¶12 ("Moreover, along with my staff, I have come to the conclusion that Lunada Bay is underutilized by surfers and other beachgoers compared to similar prized California coastal-

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	zones."), ¶¶3, 13-15; P. King Decl. ISO Motion for Class Certification ¶¶8, 9, 10, 11, 12, 13, 15, 16, and 17 [Docket No. 184-2] ; P. King Decl. ISO Opposition to City Motion to Strike Decl. P. King ¶¶13, 14, 15, 16, 17, 18, and 19 [Docket No. 216-1].
168. The actions of the City and the Bay Boys combined have a deterrent effect where Lunada Bay is underutilized and State Coastal Commission concerns have not been abated.	168. A. Willis Decl. ISO Opp. to City MSJ ¶1 ("I am the Southern California Enforcement Supervisor for the California Coastal Commission"), ¶3 ("I am not satisfied with the City's efforts to address the illegal exclusionary activity on a publicly owned beach. The City has not remedied the situation, and steps remain that the City must take to improve access to Lunada Bay."), ¶4 ("Without judicial assistance, I am of the opinion that the potential remains that beachgoers are being denied access to Lunada Bay in violation of the law, and, thus, are continuing to suffer irreparable harm.").

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3	169. City cannot provide accurate	169. Best Depo. 62:2-25, 63:1-23.
4	use of Lunada Bay by overall beach	
5	goers and does not rebut low counts.	
6	170. Since 2016, City police have	170. Best Depo. 51:23-25, 52:1-15,
7	kept beach count logs but have not	53:10-25, 54:2-8, 57:7-8, 59:3-7,
8	produced them. Still, the City's best	62:2-25, 63:1-23.
9	estimate without its logs is only	
10	between 5 to 15 surfers use Lunada	
11	Bay when the surf is good.	

Issue #6: Illegal Exclusion Is A Longstanding Problem In Lunada Bay.

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
171. Illegal exclusivity in the form of "localism" is a longstanding issue at Lunada Bay and long known by the City and Bay Boys.	171. Best Depo. 30:16-25, 31:1-17; 150:1-25, 151:1-25; 152:1-6.; 124:22-25, 125:1-25, 126:1-25, 127:1-13; Kepley Depo. 51:19-24 ("When this Guardian video came out, it caused a quick steep learning curve for me to learn some of the history. And I had heard people from the community and staff members, and all, tell me that there have been conflicts and issues in the surfing culture for many, many years, as many as 50 years or more."); Kepley Depo. 220:2-7 ("Q: Sure. Do you think localism has been a problem at Lunada Bay this year? A: Yes. Q: Do you think localism was a problem at Lunada Bay last year? A: Yes); Placek Depo. 74:5-13; Siounit Decl. ¶4; P. Neushul Decl. ISO Motion for Class Certification ¶16 [Docket No. 184-1] ("Throughout the surf community, the City of Palos Verdes Estates has the reputation for not taking

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		complaints against the Bay Boys
4		seriously and allowing its beaches to
5		become too exclusive for locals' use
6		only. By reputation, the City of Palos
7		Verdes Estates allows illegal exclusivity
8		and has done nothing to stop the Bay
9		Boys for decades."); P. Neushul Decl.
10		ISO Motion for Class Certification ¶17
11		[Docket No. 184-1] ("Today, Lunada
12		Bay in Palos Verdes Estates is known as
13		one of the most localized surf spots in
14		the world."); P. Neushul Decl. ISO
15		Motion for Class Certification ¶18
16		[Docket No. 184-1] ("Because of its
17		reputation, most non-City-residents and
18		visiting surfers avoid Lunada Bay. This
19		is because of the Bay Boys' efforts to
20		discourage visitors from coming to
21		Lunada Bay is a deterrent. Indeed, while
22		it's a prized wave, Lunada Bay is known
23		to only have a few surfers using it."); P.
24		Neushul Decl. ISO Motion for Class
25		Certification ¶19 [Docket No. 184-1] ("I
26		have long known of the reputation of the
27		Bay Boys as a longtime resident of
28		

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		Southern California, surfer, and a surf
4		historian."); Barber Depo. 101:8-22
5		("Q: How about a name, Peter
6		McCollum? Do you know that name?
7		A: I know the name. Q: How do you
8		know the name? A: He was involved in
9		an incident – '95. I don't know. I has
10		just gotten on, I believe. There was a –
11		an argument, and it made the news. I
12		know he was on it. I know the video
13		shows him kid of yelling on the video,
14		but that's all. I've never met
15		Mr. McCollum in my life, though.
16		Q: Okay. So the video of
17		Mr. McCollum yelling on the top of the
18		bluff – I think it's a Mr. Hagens and
19		Hamboy [sic] [a boy]. Do you recall
20		seeing the video? A: Yes, I did see that.
21		Q: When did you see that? A: Probably
22		not long after it happened."); Franklin
23		Decl.¶17, Ex. 16,¶¶ 18,19 ("You got it
24		son? You got it? Hey, I'm not touch'n
25		nobody. Nothing. But you won't surf
26		here again boy. You won't surf here
27		again. Fuck that. Fuck you guys. I've
28		

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		lived here too long for this shit.");
4		Blakeman Depo. 230: 16-25 ("Q: Have
5		you ever heard of someone standing at
6		the top of either the Middle trail or the
7		Point trail questioning why they're there,
8		in terms of using Lunada Bay? A: I'm
9		aware of the Peter McCollum incident.").
10		And, <i>see, e.g.</i> , Bacon Decl. ISO Motion
11		for Class Certification [Docket No. 168];
12		Carpenter Decl. ISO Motion for Class
13		Certification [Docket No. 161];
14		C. Claypool Decl. ISO Motion for Class
15		Certification [Docket No. 176];
16		K. Claypool Decl. ISO Motion for Class
17		Certification [Docket No. 166]; Conn
18		Decl. ISO Motion for Class Certification
19		[Docket No. 174]; Gero Decl. ISO
20		Motion for Class Certification [Docket
21		No. 170]; Gersch Decl. ISO Motion for
22		Class Certification [Docket No. 162];
23		Hagins Decl. ISO Motion for Class
24		Certification [Docket No. 178]; Innis
25		Decl. ISO Motion for Class Certification
26		[Docket No. 165]; Jongeward Decl. ISO
27		Motion for Class Certification [Docket
28		

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
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3		No. 177]; Krell Decl. ISO Motion for
4		Class Certification [Docket No. 180];
5		Lanning Decl. ISO Motion for Class
6		Certification [Docket No. 172];
7		MacHarg Decl. ISO Motion for Class
8		Certification [Docket No. 160]; Marsch
9		Decl. ISO Motion for Class Certification
10		[Docket No. 179]; Neushul Decl. ISO
11		Motion for Class Certification [Docket
12		No. 173]; Otten Decl. ISO Motion for
13		Class Certification [Docket No. 159-3];
14		Perez Decl. ISO Motion for Class
15		Certification [Docket No. 164]; Sisson
16		Decl. ISO Motion for Class Certification
17		[Docket No. 169]; Will Decl. ISO
18		Motion for Class Certification [Docket
19		No. 163]; Young Decl. ISO Motion for
20		Class Certification [Docket No. 167].
21	172. City admits that the Lunada Bay	172. Best Depo. 157:22-25, 158: 1-25,
22	locals have a gang mentality, and	159:1-21; Kepley Depo. 67:15-27, 68:1-
23	attempt to dissuade outsiders from	12 ("Q: Now, you said that the Bay
24	coming to City. They are territorial,	Boys have a gang like mentality or a
25	discourage outsiders from using the	gang mentality, what did you mean by
26	beach, and intimidate outsiders.	that?..[objections and colloquially]...
27		A: Okay. So the gang like mentality
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1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
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3		that I referred to was the way in which
4		gangs, street gangs, often claim a
5		territory. And will confront people who
6		come into their territory, where you
7		from, what are you doing, type of thing.
8		Some of what was relayed to me with
9		respect to those involved in disputes
10		down on Lunada Bay in dissuading them
11		from coming to surf there, because they
12		are not from there. That was a similarity
13		to how some gang members might speak
14		to a person coming into a particular
15		area."); Kepley Depo. 221:4-8
16		("Q: Earlier you said you thought they
17		had a gang mentality, but they are not a
18		gang because they are not shooting
19		people and they are not stabbing people;
20		is that right? A: I did make statements
21		like that, yes.); Franklin Decl. ¶26, Ex.
22		18.
23	173. The City admits that it is not	173. Best Depo. 151:8-25, 152:1-6;
24	capturing all of the complaints	Kepley Depo. 108:21-25, 109:1-8).
25	regarding illegal exclusivity at Lunada	
26	Bay.	

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Issue #7: The City Does Not Take Seriously The Problem Of Illegal Exclusion At Lunada Bay.

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
174. For about a decade, the City has had two written ordinances related to its localism problem.	174. City MPA ISO MSJ 14:5-18.
175. The first ordinance to address the localism problem makes it illegal to block access to the beach, and the second makes it illegal to dangerously operate a surfboard (surf-riding or "dropping in") ordinance. But the blocking access to the beach ordinance has <i>never been used</i> and the surf-riding ordinance was <i>used for the first time a few months ago</i> (Spring 2017) – and only after a CPR volunteer insisted on follow up.	175. Best Depo. 38:21-25, 39:1; 86:20-25, 87:1-25, 88:1-9, 90:8-23, 91:24-25, 92:1-7, 93:11-18; 130:23-25, 131:1-3, 15-25, 132:1-25, 133:1-25, 134:1-16; Barber Depo. 210:19-23 ("Q: Have you ever heard of there being a citation issued related to that ordinance [surf-riding] in your 20 years [with the department]?".... A: I don't recall."), 211:18-22 ("Q: Have you ever heard of anyone in the police department enforcing that ordinances [blocking access to the beach]? A: I don't recall anybody doing that."); Kepley Depo. 135:7-18 ("Q: Okay. So that's relating to surf riding and requires surfers, among others, to have due regard to safety for others nearby. Do you know if anyone has ever been cited at Lunada

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		Bay for violating this ordinance, in the
4		last two years? A: I don't know that.
5		Q: Would your department keep any
6		statistics on that? A: We would be able
7		to retrieve statistics on that for tickets
8		that were issued for that, just like we
9		would a stop sign or speeding. But they
10		don't notify me about those either.");
11		Kepley Depo. 140:14-20 ("Q: Okay.
12		Now, Palos Verdes Estates ordinance
13		9:16:030 essentially states that no one
14		shall interfere or impede the flow of
15		travel to any area providing access to the
16		beach. Do you know if anyone has been
17		cited at Lunada Bay for violating this
18		ordinance in the past two years? A: No,
19		I don't know.").
20	176. While it has a known problem	176. Barber Depo. 175: 2-7 ("Q: In
21	with illegal localism, the City has	terms of – does the City do any training
22	failed to train its personnel on coastal	of officers on coastal access laws?
23	access laws, including its own	A: Coastal access laws? ... I have never
24	municipal ordinances.	had any training involving coastal access
25		laws, no."), 176:4-25, 177:1-25, 178:1-
26		10.); Best Depo. 154:4-25,155:1-
27		25,156:1-25,157:1-21; Repp Loadman
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		Depo. 13:15-17, 66:11-25, 67:1-3;
4		Kepley Depo. 136:12-25 ("Q: Do
5		officers receive any training to know
6		what they're looking for in terms of what
7		a violation would be? A: Specific to
8		that statute? Q: Yes. A: The officer
9		when they are newly trained they spend
10		six months with a training officer. And
11		they cover the gamut of traffic, criminal
12		law, DUIs, domestic violence. They
13		cover everything. And I would expect
14		they would also cover some of the
15		surfing enforcement, if you will. But
16		whether or not they get absolute specific
17		information about that particular section
18		and the enforcement of those specific
19		elements, I cannot say.")
20	177. The City – through its City	177. Placek Depo. 145:15-25, 146:1
21	Manager, election officials, and	("Q: "Have you heard any persons in
22	certain members of the police	your department calling localism in
23	department - do not take efforts to stop	Palos Verdes Estates a myth?" A: "Yes."
24	illegal exclusivity seriously, and have	Q: "Would they have been sworn
25	called it a "myth" or "urban legend."	personnel?" A: "Yes.") Barber Depo.
26		235:11-18 ("Q: Okay. And do you – I
27		think it was the mayor that called the
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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>issue of localism an urban legend. Do you recall ever hearing that? A: Yeah, I think I recall her saying that. Q: Is that your understanding too? A: Is that my understanding? No, I wouldn't say an urban legend. That's not – I just said there is – I don't believe there is a localism issue.") Siounit Decl. ¶4 ("During the five years I worked for the City, I did not observe the police department take the issue of localism seriously and doubt that they do today.") Kepley Depo. 21:18-25, 23:1 ("Q: So then it's your position that the beaches at Palos Verdes Estates, should be open and accessible to everybody? A: Absolutely. Q: Regardless of whether or not they live in Palos Verdes Estates? A: That's correct. Q: <i>Do you know if this belief is shared by all members of the city council? [objections and colloquially]</i> A: <i>I don't know.</i>"), Kepley Depo. 23:6-25, 24:1-8 ("Q: Do you regularly meet with the city manager? A: I do. Q: Have you</p>

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		discussed localism with him? A: Yes.
4		<i>Q: And to your knowledge, does he</i>
5		<i>generally believe that Palos Verdes</i>
6		<i>Estates beaches should be open to the</i>
7		<i>anyone? [objections and colloquially]</i>
8		<i>A: It's my belief that, no, he doesn't</i>
9		<i>no.").</i>
10	178. When the Coastal Commission	178. Willis Decl. ¶3. ("Here, the
11	asked the City to address its concerns,	overall situation in the City of Palos
12	their requests were not followed.	Verdes Estates ("City") still requires
13	Thus, it supports the <i>Spencer</i>	change and improvements to ensure
14	litigation.	public access to Lunada Bay is available
15		to all. More specifically, I am not
16		satisfied that the City's efforts to address
17		the illegal exclusivity activity on a
18		publicly-owned beach has fully remedied
19		the situation.") ¶4 ("I am of the opinion
20		that the potential remains that
21		beachgoers are being denied access to
22		Lunada Bay in violation of the law, and
23		thus are continuing to suffer irreparable
24		harm.") ¶4 ("Plaintiffs' efforts may
25		continue to work as a catalyst to
26		encourage to survey its options to ensure
27		compliance with respect to laws that
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		support access to California's coast.")
4		Best Depo. 229:2-25, 230:1-12, 233:6-8.
5	179. City's claimed efforts to train	179. Barber Depo. 193:6-13 ("Q: Have
6	and learn about illegal exclusivity are	you had any training on surfing etiquette
7	few to nonexistent. There is no	or rules in your time as a police officer?
8	training for officers on surfing	... A: Never. Q: Do you have any
9	etiquette, little training on diversity	understanding of what surfing etiquette
10	issues.	or rules might exist generally? A: No,
11		I'm not a surfer."), 203: 11-15 ("Q: So
12		you've not had any training in surfing
13		etiquette? A: No. Q: Or the dangers of
14		surfing? A: No."); Best Depo. 154:4-25,
15		155:1-25, 156:1-25, 157:1-21;
16		Dahlerbruch Depo. (11/18/16) 250:8-18,
17		258:20-25, 259:1-25, 260:1-13. (City
18		Manager has <u>not</u> reached out to other
19		local agencies about problem of
20		localism.) Dahlerbruch Depo.
21		(11/18/16) 75:6-25, 76:1-23 (efforts to
22		understand problem of localism was
23		limited, and no surveys were done).
24	180. City's police officers generally	180. Barber Depo. 197:16-23, ("There
25	do not go down to beach to enforce its	are two trails that most people use, but in
26	laws.	my mind, I don't think either one is safe
27		to traverse down there...it's not safe to
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1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
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3		get down there, if you know what I
4		mean. The trails are slippery, and it's—I
5		mean, that's why a lot of officers, I mean
6		— we don't want to traverse those trails,
7		because we may fall and break our
8		necks, and that's the only thing I would
9		tell people."); Kepley Depo. 99:14-16
10		("It's more typical for them [police
11		officers on patrol] to stand at the top.
12		They have gone down to the beach. I
13		don't know how many times.")
14	181. The City's claimed effort to stop	181. City MPA MSJ, pp. 15-17.
15	localism are stale, ineffective, or	
16	otherwise overstated: (1) it had boat	
17	patrols, (2) had undercover operations,	
18	(3) printed localism fliers, (4) placed	
19	an LED message board on the bluff,	
20	and (5) started community outreach to	
21	learn about the problem.	
22	182. According to the City 30(b)(6)	182. Best Depo. 39:11-13 ("Q: When
23	deponent, (1) the City's boats have not	was the last time that the city had an
24	worked in about four years, (2) the	operational boat? A: Three or four
25	City has had just two undercover	years ago."), Best Depo. 114: 5-9
26	operations in about 17 years, (3) it	("Q: And in terms of undercover
27	printed somewhere between hundreds	operations between the one in '99 or
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3	to 1,000 localism fliers, but does not	2000 and the one that was on Martin
4	know how many were distributed, let	Luther King, Jr. Day in 2015, were there
5	alone distributed to outsiders, (4) the	any other undercover operations that
6	LED message board was ineffective	you're aware of? A: No."), Best Depo.
7	and only used about 10 times over 18	71:4-10 ("Q: So how many cards would
8	months, and (5) the community	you estimate – how many cards would
9	outreach program was not directed to	the City estimate it has handed out to
10	the people being denied access, but to	beachgoers? A: It's a good question.
11	locals.	Lots of them. Cause I'm the one that
12		printed them. I create them, I print them
13		up. I would estimate over hundreds, if
14		not a thousand cards."), Kepley Depo.
15		99:24-25, 100:1-7) ("Q: Do you know
16		how many cards were distributed?
17		A: Hundreds. But I don't know how
18		many. Q: Do you know on how many
19		occasions they were distributed? A: I
20		do not. Because they are distributed to
21		the police officers to pass out to folks in
22		the community when they were on
23		patrols and doing their checks. So I
24		don't. I never received a report of how
25		many per day or month were passed
26		out."), Best Depo. 72:21-25, 73:1
27		("Q: And was there a follow-up in terms
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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>of how many had actually been distributed? A: They were not numbered. I believe Captain Velez now has started tracking how many officers respond back and how many they've distributed, but I'm not exactly sure of when he started doing that."), Best Depo. 74:18-25, 75:1-5 ("Q: Were the display board used with the same information? A: We have in one of the patrol cars a blue message sign that scrolls, that we could tailor messages. And we parked that vehicle in Lunada Bay with a blue scrolling message that something to the effect: Report localism to the police department. And that vehicle is parked out in Lunada Bay with the sign running. Q: And how long was that vehicle parked at Lunada Bay with the sign scrolling about report localism? A: We would – I don't know how many days it was actually displayed out there."); Best Depo. 76:6-8, 13-18 ("Q: How long was this – how long has this been used at Lunada Bay? A: I'd say, a year and a</p>

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	half, two years. ... Q: What's your best estimate in terms of how often it's been deployed at Lunada Bay on the localism issue? A: I'd estimate about ten times."), Kepley Depo. 102:2-9 ("It's still in use. We have received feedback that it's a little difficult to read. So we don't rely on it as much as we once did. But it does go out occasionally. It's used for other messages in the community, as well, traffic safety messages. Q: That's just one cruiser that has the LED display? A: Yes."); Best Depo. 69:18-25, 70:1-2 ("Q: And in terms of community outreach, do you know is there community outreach to beachgoers who might not be from Palos Verdes Estates? A: Beachgoers – well, anybody who is in the area we would contact them and provide them that information. So I imagine not everybody that goes to the beach in Palos Verdes Estates is from Palos Verdes Estates. But if you're asking if we go to Hermosa Beach or Redondo

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	Beach or Huntington Beach to pass those out, the answer would be no."), Best Depo. 70:13-25, 71:1-3 ("Q: And the question is a simple one: Are you aware of Palos Verdes Estates doing any direct mail or outreach on its own as to its beaches or attempting to purchase mailing lists so it could do a community outreach? A: No. Q: Are you aware of Palos Verdes Estates doing an electronic, whether it's a social media or otherwise outreach to try to reach people from outside the community? A: For what purpose? Q: To talk about the issue of localism and issue with crimes. The same purpose that you were talking about those cards you handed out, so it be a broader net to capture more people? A: No."), Kepley Depo. 116:10-23.

Issue #8: The City Police Are Complicit In The Problem With The Bay Boys Illegal Activity.

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
183. For about five years, the City permitted Lunada Bay Boy and Defendant Brant Blakeman to use a City-owned phone to coordinate efforts to exclude outsiders, including the harassment of Plaintiffs Reed and Spencer.	183. Blakeman Depo. 14:9-25, 15:1-22; Best Depo. 14:10-25, 15:1-11, 174:6-25, 175:1-25, 176:1-25, 177:1-2, 178: 6-25,179:1-8.
184. The City failed to preserve data on this City-owned phone in response to discovery request.	184. Dahlerhbruch Depo. (11/18/16) 70:15-25, 71:1-2, 71:11-18; 88-94; Best Depo. 174:6-25, 175:1-25, 176:1-25, 177:1-16, 178:6-25; 179:1-7.
185. Bay Boy Michael Thiel [REDACTED] the City to not hold an undercover investigation, and the City listened. Moreover, it was the very same day that Plaintiff Diana Reed requested extra assistance (was provided none), and sexually harassed by Bay Boys.	185. Dahlerbruch Depo. (11/18/16) 138:21-25, 139:11-21 ("Q: Do you recall there being an undercover operation set for January 2016 to try to ferret out the issue of violence on the beach? A: At one point I was aware from the Chief of Police that they had planned some type of operation.... Q: Did you receive an in-person visit from anybody relating to an undercover operation planned for Lunada Bay?

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>A: One of the folks that had reached out to the City shared an in-person meeting that he was aware that there might be something planned. Q: And who was that? A: I think his name was Thiel was his last name. I don't remember his first name."); Kepley Depo. 42:10-23 ("Q: And you said the operation was compromised, how was it compromised? A: It was brought to my attention that the city manager had received a phone call from someone claiming to be a surfer in Lunada Bay that was questioning why the cops are coming out undercover tomorrow. So the caller appeared to have information that he knew that our operation was the following day. So upon hearing that from the city manager, it was clear to me, the information had been leaked out to the community somehow or to surfers, whoever that might have been on the phone. And to protect the officers, I decided to cancel the operation."); Best Depo. 169: 20-25, 170:1-11 ("Q: And</p>

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	what is your understanding of that undercover operation that was set for February 13th, 2016? A: My understanding of it was through coordination with the detective bureau and Captain Mark Velez and the chief, they planned the undercover operation with outside resources from another department. And I didn't know when that was to take place, what time. It was kind of – information that wasn't distributed about. And I learned about its canceling when the chief called me and he – he was – he said the operation at Lunada Bay is cancelled and he was not happy. And I was going to – okay. I wasn't part of the planning or execution of this, so I don't know if was trying to get a hold of Mark, but he told me it was canceled and I said okay. That's the extent of the information that I had on that operation."; Franklin Decl. ¶31, attaching ""[REDACTED]"" [REDACTED]" marked "CONFIDENTIAL" (City Doc.

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		Nos. 7087-7096) [REDACTED]
4		[REDACTED]
5		[REDACTED]
6		[REDACTED]
7		[REDACTED]
8		(City Doc. No. 7088); [REDACTED]
9		[REDACTED]
10		[REDACTED]
11		[REDACTED]
12		[REDACTED]
13		[REDACTED] (City Doc. No. 7089);
14		Franklin Decl. ¶16, Ex. 15 attaching
15		Defendant Johnston Cell Record Detail
16		SMS Messages #766 from Charlie
17		"Moet" [sic] on 3/29/2016 ("My source
18		tells me that a class action lawsuit is in
19		the works against the "bay boys" and the
20		Chief of PVE. Probably that Diana
21		bitch. Watch out for subpoenas. Great
22		time to be on the ultra downlow.")
23	186. While the City is strict in	186. Barber Depo. 214:9-25, 215:1-15
24	enforcing its laws against outsiders, it	(has not cited locals for drinking alcohol
25	is lenient when locals break the law.	in Lunada Bay nor taken other action),
26		218: 7-25, 219:1-16 (would instruct a
27		family that attempts to cook outdoors
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		with a small contained grill that it is
4		against the law to do so on City park
5		land); Kepley Depo. 143:13-22);
6		Franklin Decl. ¶16, Ex. 15 attaching
7		Defendant Johnston Cell Record Detail
8		(Call Log #753 1:17 minute phone call
9		to Charlie Moet [sic] at 2:15 p.m. from
10		Defendant Johnston Chat Message
11		#2046 2/13/2016 "Nothing happened
12		really couple trolls they got nothing.";
13		(Chat Messages 1032-1037 2/12/2016
14		"No fucking way Taloa is back this
15		year;" "If you wanna be a bay boy we
16		might need help Tomm" "Could be a
17		great help if ur there!!! Supposed to be a
18		police set up at our spot – calling all
19		gards"; SMS Message #1056 2/13/2016
20		"Don't see any cops at the top"; SMS
21		Messages #1607 7/26/15 "beers at bay
22		are you around," #1748-1751 6/4/15 "I
23		will by [sic] beer," "meet u at point
24		trail," "on my way to LB," #1195 3/2/16
25		"Epic patio rager. Got wood and beer.
26		Not leaving. Get down here," #3654
27		8/9/16 "VanDine and I are raging patio
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		tonight campfire style for all the good
4		times ever spread the word!!!"
5	187. When outsiders complain to the	187. Barber Depo. 193:6-13 ("Q: Have
6	City police about locals breaking the	you had any training on surfing etiquette
7	law, they're first met with a response	or rules in your time as a police officer?
8	of: "I'm not a surfer." Next, they are	... A: Never. Q: Do you have any
9	discouraged from making complaints,	understanding of what surfing etiquette
10	and the complaints they do file are not	or rules might exist generally? A: No,
11	followed up on but merely logged as	I'm not a surfer."); Best Depo. 130:23-
12	"incidents."	25, 131:1-3, 13-24, citing to A. Belda
13		video ("I'm not a surfer so I don't
14		understand surf etiquette, and I don't
15		even know what dropping in is.").
16	188. Police Officer Association	188. Barber Depo. 90:13-15, 246:1-16.
17	President Sergeant Steve Barber is	
18	friends with several Bay Boys, goes to	
19	barbecues and parties with them,	
20	communicates with them on his	
21	personal phone. This includes Charles	
22	Mowat, who had informed Barber that	
23	he complained directly to the City's	
24	elected officials about Chief Kepley	
25	enforcing surfing-related rules in	
26	Lunada Bay. Barber communicates	

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
2		
3	with Bay Boy Mowat on his cell	
4	phone.	
5	189. However, Barber "investigates"	189. Barber Depo. 221:1-25, 222:1-22
6	his friends when they're accused of	("Q: Has anyone from the City asked
7	wrongdoing. Further, the City did not	you to provide them your cell phone
8	search Sergeant Barber's phone in	related to this case? A: My personal?
9	response to Plaintiffs' discovery	Q: Yes. A: No. Q: So no one has
10	requests.	approached you and said we need your
11		cell phone with related to any surfing
12		incidents at Lunada Bay. A: No.")
13	190. And, Sergeant Barber refused to	190. Blakeman Depo. 150:4-25,
14	provide his phone number or provide	151:25, 153:1-8; Barber Depo. 90:13-15,
15	documents relevant to this case off his	246:1-16.
16	personal phone.	
17	191. And when asked if anyone	191. Barber Depo. 237:25, 238:1-20.
18	asked him preserve data on his	
19	personal phone, he answered "no" and	
20	refused to provide further information	
21	based on an instruction from his	
22	lawyer. When asked if he deleted	
23	information off his personal phone	
24	since the filing of this lawsuit, he was	
25	instructed not to answer.	
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3	192. City Manager Dahlerbruch, City	192. Dahlerbruch Depo. (11/18/16)
4	Council members and Captain Best	221:7-25, 222:1-21.
5	meet Bay Boys at Rock Fort.	
6	193. Further Bay Boys offer them	193. Dahlerbruch Depo. (11/18/16)
7	beer.	131:10-25, 132:1-25; 133:1-11;
8		136:22-25, 137:1-4 (in person meeting
9		with Charlie Mowat).
10	194. City police officers know and	194. Kepley Depo. 40:8-10 ("Because
11	socialize with Lunada Bay locals that	we are a small city, in the context, that
12	exclude outsiders from the City.	many of our officers know the surfers
13		and the surfers know our officers.");
14		Barber Depo. 24:24-25, 25:1-16; Barber
15		Depo. 147:7-16 ("Q: Is Charlie [Mowat]
16		friends with anybody else in the police
17		department? A: Probably not as close as
18		I am. Q: How about – are there some
19		other he's friends with? A: He may
20		know or be familiar with other officers.
21		Q: Who do you think – who would you
22		estimate that he's familiar with? A: To
23		tell you the truth, maybe Rick Delmont,
24		who used to work for us."); Best Depo.
25		190:20-25, 191:1-25, 192:1 (Brant
26		Blakeman and Steve Eberhard); Kepley
27		Depo. 152:9-25, 153:1-6 (Corporal
28		

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
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3		Hellinga and Officer Reed have
4		familiarity with the Bay Boys); K.
5		Franklin Decl. ¶31, Ex. 21 [REDACTED]
6		[REDACTED]
7		[REDACTED] marked
8		"CONFIDENTIAL" (City Doc. Nos.
9		7087-7096) [REDACTED]
10		[REDACTED]
11		[REDACTED]
12		[REDACTED]
13		[REDACTED] (City Doc. No. 7093); Franklin
14		Decl. ¶16, Ex. 15 attaching Defendant
15		Johnston Cell Record Detail SMS
16		Message #617-#618 ("Got to tell my side
17		of story to detective [regarding Reed
18		harassment complaint]. Cops were being
19		cool was only there for 2 hours.")
20	195. The City can identify the	195. Best Depo. 161:4-11 (identifying
21	Lunada Bay locals (aka "Bay Boys")	Charles Mowat), 162:20-25, 163:1
22	who attempt to dissuade others from	(identifying Brant Blakeman, Bill
23	using the beach.	Kamerle, Alan Johnston, Michael
24		Papayans, Angelo Ferrara, Frank Ferrara,
25		Charlie Ferrara, NF, Leo Ferrara),
26		171:24-25, 172:1-3 (Michael Thiel is
27		associated with Lunada Bay); Placek
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		Depo. 75:17-20, 24-25, 76:1-6, 12-24;
4		Placek Depo. 90:22-25, 91:1-2 ("What I
5		meant is we're a small community and
6		we know a lot of residents within the
7		City. And we know people that
8		frequently surf the area."), 91:13-17
9		("Certain people in the department are
10		familiar with people that surf in that
11		area."), 91:23-25, 92:1-15 ("Certain
12		members of the Police
13		Department....Specifically, Sergeant
14		Barber....He was the subject that I
15		believe knows a lot of the subjects that
16		surf in that area....My understanding is
17		that he grew up around the area. So, he
18		would know people that live in this
19		area."); Placek Depo. 93:8-15 ("Q: And
20		when it was 'them', what were you
21		referring to when you said 'them'; were
22		those the people that surf Lunada Bay?
23		A: Yes."); Placek Depo. 94:1-25, 95:1-
24		15; D. Milena Reed Decl. ISO Motion
25		for Class Certification ¶29 [Docket
26		No. 159-5] (an officer told Reed they
27		have a "book containing driver's license
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		photographs of all Lunada Bay Boys"
4		and it would be a problem to identify the
5		individuals because they know all the
6		people who frequent the area.); Barber
7		Depo. 161:24-25, 162: 1-9 ("Q: Have
8		you ever heard of the persons that surf
9		Lunada Bay referred to as quote 'Bay
10		Boys,' close quote? A: I have heard that
11		term. Q: Where have you heard that
12		term? A: When – well, that was a term
13		that I heard when I was just starting off
14		as a dispatcher in 1994. Q: And did you
15		hear that in the community or in the
16		police department? A: Both. Q: And
17		what does the term, 'Bay Boys' refer to?
18		A: The surfers who surf Lunada Bay."
19		Barber Depo. 25: 19-24 ("Q: Do you
20		know – related to your police work in
21		Palos Verdes Estates, can you recall
22		names of any other Ferraras?
23		A: Angelo, Leo, and NF, and I know the
24		name, Frank Ferrara, but I'm not real – I
25		– I'm not familiar – I've really never
26		talked to Frank too often. I think maybe
27		once in my career there.") Barber Depo.
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		26: 3-7 ("Q: And what was the most
4		recent – what was the purpose, if you can
5		recall, in your first speaking with
6		Angelo? A: Well, without going into
7		too much detail, because his son is a
8		juvenile and, his son ran into some legal
9		problems."), Barber Depo. 40:15-18
10		("Q: And have you had occasion to
11		interact with Leo Ferrara related to
12		work? A: Yes, I know that he – I've
13		seen him frequently in the Lunada Bay
14		area. I believe he – he surfs down
15		there."); Barber Depo. 69: 9-16
16		("Q: And how do you know Joe Bark?
17		A: I've known Joe though not only
18		through work....I also know Joe from
19		the years of working in PV Estates. He
20		surfs, he paddle boards, does all kinds of
21		stuff. So professionally and personally
22		I've just gotten to know Joe throughout
23		the years.") Barber Depo. 71: 5-18 ("I've
24		probably gotten to know Charlie just
25		over the years of seeing him around in
26		the city. He went to – he's a local guy.
27		He went to Palos Verdes High
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		School...Just became friendly with him
4		over the years. Nice guy, and so I
5		consider him a friend."), Barber Depo.
6		71: 24-25, 72:1-3 ("Q: Okay. But over
7		to his house for events and that type of
8		thing? A: I have been, yes. Q: Okay.
9		Barbecues? A: Yes."), Barber Depo. 71:
10		5-7 ("Charlie has probably made a
11		donation [to the police union] in the past.
12		He's a resident."), Barber Depo. 90:13-
13		15 ("Q: And have you – have you ever
14		communicated with Mr. Mowat on your
15		personal phone? A: Yes."), Barber
16		Depo. 93:1-8 ("Q: How do you know
17		John Camplin? A: He is a resident or
18		live in PV – I don't know if he lives in
19		PV Estates anymore. He is a surfer who
20		surfs Lunada Bay. I've gotten to know
21		John a little bit through Charlie Mowat,
22		but that the extent of John. Q: A
23		barbecue or something? A: Yeah, yeah,
24		he's been around for a long time
25		though..."); Barber Depo. 93:16-21
26		("Q: How do you know Michael Thiel?
27		A: He's a resident of PV Estates, who,
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		also, frequents Lunada Bay, but I don't
4		even know if he surfs."); Barber Depo.
5		94: 1-4 ("Q: Do you know Mark Griep?
6		A: I know who Mark Griep is. Q: Who
7		is Mark Griep? A: He is just a guy who
8		comes to Lunada Bay to surf."; Barber
9		Depo 94:13-16 ("Q: Do you know
10		David Mellow [sic]? A: Yes. Q: How
11		do you know David Mellow [sic]?
12		A: He is known to surf the Lunada Bay
13		area."); Barber Depo. 95:7-14 ("Q: Do
14		you remember – what do you know
15		about Dan Dreiling Junior? Do you
16		know, does he surf Lunada Bay? A: I
17		don't know if Dan – D.J. – that's his
18		name. I don't think he surfs Lunada Bay
19		very often now. He may have in the
20		past. Q: Do you – D.J. or Dan Dreiling,
21		Junior, he's the former chief's son; is that
22		right? A: Correct."); Barber Depo.
23		95:23-25 ("Q: How about Pete Bavros
24		[sic]? Do you know that name? A: I
25		know that name, yes. Q: How do you
26		know that name? A: He's a – I believe
27		he grew up in PV Estates and surfs
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		Lunada Bay."); Barber Depo. 97:10-14
4		("Q: How do you know Fred Straeter?
5		A: Fred Straeter is a – live with Charlie
6		for a little bit, and he was an artist – or is
7		an artist. He likes to do paintings of, like,
8		Lunada Bay and stuff like that."), Barber
9		Depo. 99:4-9 ("Q: Zen Del Rio? Do
10		you know that name? A: I've heard that
11		name. I believe I've heard that name
12		brought up as being a surfer from
13		Lunada Bay. Q: Do you know how
14		you – who would you have heard that
15		from? A: Just I – probably from Charlie
16		Mowat."); Barber Depo. 99:22-25,
17		100:1-5 ("Q: Tony Pazanowski, do you
18		know that name? A: I know Tony, yes.
19		Q: How do you know Mr. Pazanowski?
20		A: Through just having – he grew up in
21		Palos Verdes Estates, surfed Lunada
22		Bay, friends with Charlie Mowat. That's
23		about it. Q: Have you been to barbecues
24		with Mr. Pazanowski in attendance?
25		A: Maybe at Charlie Mowat's house."),
26		Barber Depo. 100:23-25, 101:1-3
27		("Q: How do you know Alex Gray?
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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>A: Alex is a friend of Charlie's. He also a professional surfer, and he grew up in Palos Verdes and surfs in Lunada Bay.</p> <p>Q: And have you socialized with Alex?</p> <p>A: At one of Charlie's barbecues."), Barber Depo. 124:5-8 ("Q: How do you know Tom Sullivan? A: Tom I've known for, gosh, since I started. He's frequented Lunada Bay for a long time. I do know he surfs down there, so I've just been familiar with Tom for a while.</p> <p>Q: And have you – are you friends Mr. Sullivan outside of work? A: No, but I've have seen him at the party at Charlie Mowat's."), Barber Depo. 124:21-25, 125:1-4 ("Q: Jason Safford?</p> <p>A: Yes. Q: How do know that name?</p> <p>A: Jason has lived in PV Estates for a long time. He does hang around with a lot of the guys that surf Lunada Bay, but I'm not sure if he's an actual surfer himself. Q: So you would say that [he] hangs around with Mr. Mowat?</p> <p>A: Mr. Mowat and some of the other names you've mentioned before."),</p>

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		Barber Depo. 127:2-6 ("Q: How about
4		Eric Lamers? A: Yes, I know Eric.
5		Q: How do you know Eric? A: Eric has
6		live in PV Estates for years. I believe he
7		grew up there. I've seen him in the
8		Lunada Bay area....Q: And have you
9		seen him at one of Mr. Mowat's parties?
10		A: Yes."), Barber Depo. 128:12-16
11		("Q: I forget. Do you know Sang Lee?
12		A: I know Sang Lee, yes. Q: How do
13		you know Sang Lee? A: Sang Lee, I
14		believe was born and raised in PV and he
15		surfs Lunada Bay."); Barber Depo.
16		130:1-6 ("Q: How about someone
17		named Paul Hudabil [sic]? A: I know
18		Paul Hudabil [sic], yes. Q: How do you
19		know Paul Hudabil [sic]? A: Paul lives
20		in PV Estates. He – I think he's a L.A.
21		County lifeguard part-time, and he does
22		surf in Lunada Bay."); Barber Depo.
23		130:17-24 ("Q: What are the Caldwells
24		that you know? A: Matt Caldwell and
25		Reno, Steven Reno Caldwell. Q: And
26		how do you know Reno surfs? A: I've
27		seen him in Lunada Bay before."),
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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	Barber Depo. 131:14-20 ("Q: How do you know Robert Bacon? A: Robert Bacon was born and raised in PV Estates. He own a little roofing company, also, and he surfs in Lunada Bay. I've seen him down there, and, yeah, I've seen him with a surf board [sic]. Q: Have you seen him at one of Mr. Mowat's parties? A: Yes."), Barber Depo. 132:15-23 "[W]hat were the reasons you've encountered Mr. [Alan] Johnston? A: I honestly can't remember the first time I've ever encountered Mr. Johnston, but it was early on in my career....maybe alcohol, marijuana, and then the most recent one was, obviously, because he was investigated for the incident with Diana Reed."), 142:19-24 ("Q: Have you talked to Charlie about surfing in Lunada Bay? A: Yeah, I've talked to him about surfing. Q: And what, if anything, do you remember talking to him about surfing in Lunada Bay? A: I asked him who he thought the best surfers were."); Barber Depo.

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	143:16-25 ("Q: Have you ever had any conversation with Mr. Mowat about the issues of localism? A: I have talked to him a little bit about the localism issue. Charlie is a guy that seems to – I've never heard of him saying or doing anything to anybody, but, you know, when these incidents come up, talking to somebody who does surf down there helps us better understand what exactly is going on."), Barber Depo. 107:1, 108:1-13 ("Q: What do you know about Danny's Day? A: I forget who Danny exactly was, but I guess he used to live in Palos Verdes Estates, and he was killed, and that was their celebration for him." Q: Who is "they"? A: That was the surfers who surf Lunada Bay. Those were their memorial. Q: So the surfers that surf Lunada Bay have a memorial? Is that your understanding? A: From what I gather, yeah. Q: Had you heard about that from anybody else other than Charlie Mowat? A: I don't – I probably maybe Brant Blakeman had mentioned it

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	before." Barber Depo. 72:16-18 ("Q: And I'm going to ask about a few – how about Mr. Papayans? Do you know the Papayans family? A: I do.") Barber Depo. 271:2-7 ("Q: Okay. And is the older Papayans, is he referred to as 'Paps' sometimes? A: Yes. Q: And who refers to him as Paps? A: Most of the guys from the people who do surf Lunada Bay."); Blakeman Depo. 243: 3- 25 ("Q: And how long have you known Mr. Barber? A: Eight years maybe. Q: You said you knew him from the community? A: Yes. Q: Did you know him from your work in your volunteer work? A: No through that, no. Q: How did you know him? A: Just the community. He's a really good officer. He keeps in touch with the community, you know. And I know – I know a lot of police officers, PV police officers. Q: Besides Mr. Barber and Mr. Eberhard, who are the other – you said you knew lots of PV police officers? A: I know Ken Eckhart (Phonetic).

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		Q: Ken Eckhart? A: Yeah. Q: How
4		long have you know Mr. Eckhart?
5		A: 10-12 years. Q: So Mr. Barber,
6		Mr. Eberhard, Mr. Eckhart. Who else do
7		you know? A: Rick Delmont
8		(Phonetic), who's no longer a police
9		officer there. He's retired.
10		Q: Mr. Barber, Mr. Eckhart,
11		Mr. Delmont. Anybody else? A: Aaron
12		[Belda] – I don't know his last name.
13		Q: Valez? Do you know officer Valez?
14		A: Oh Yea. Let's see. He's a captain or
15		something.....I know Luke Halinga
16		(Phonetic) too."); Kepley Depo. 265:12-
17		20 ("And then Dan Dreiling Jr. Q: Why
18		is it that you recognize his name? A. I
19		know him to be the son of the former
20		police chief. Q: Are you aware that he
21		used to surf Lunada Bay? A: Junior?
22		Q: Correct. A: I am."); Franklin Decl.
23		¶16, Ex. 15 attaching Defendant
24		Johnston Cell Record Detail SMS #760-
25		#762 (3/29/16 "Read it you're being
26		fingered broham"; "Yea saw that super
27		gay!! Who narked my name!! So
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		lame!!"; "I bet it was police chief he has
4		photos of all of us she probably just
5		picked from a line up don't trip to hard
6		she has nothin it's not illegal to be
7		annoying. .just be prepared for shit
8		show . . .").
9	196. Sergeant Barber, friend of the	196. Barber Depo. 150: 4-21 ("Q: Do
10	local surfers, is the policeman whom	you recall going out to Mr. Blakeman's
11	the City asks to investigate the illegal	house on February 29, 2016 about noon
12	activity of the Bay Boys.	to talk to him about what happened
13		down – between him and Mr. Johnston
14		and Diana Milena Reed? A: Yes.
15		Q: What do you recall? A: Sergeant
16		Coalinga [sic] knew that I knew Brant,
17		had – I guess, during their course of the
18		investigation, they had found out that
19		Mr. Blakeman had possibly videotaped
20		the incident, so because I have a better
21		rapport with Brant Blakeman, I Lou
22		Coalinga [sic] asked me to go and ask if
23		he had a copy of it. Q: And do you
24		know what happened? A: Brant said, 'I
25		don't have anything. I'm sorry.' Q: He
26		wouldn't – well, I mean, I wouldn't say
27		he wouldn't cooperate, but he just said,
28		

1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		'No, I have nothing. I really don't want
4		to comment on it."); Blakeman Depo.
5		242: 1-8 ("Q: Palos Verdes Police never
6		talked to you about that day [February
7		13, 2016]? A: They asked me – they
8		actually did. They came over to my
9		house. I didn't go down there for an
10		interrogation or whatever. They came
11		over to my house. And he asked me if I
12		poured beer on her and exposed himself
13		and those are both no, no.") 242: 18-22
14		("Q: Who came over to your house? Do
15		you know what officer? A: Yes.
16		Q: Who? A: Steve Barber. Q: How
17		long did Mr. Barber spend at your
18		house? A: Five minutes.")
19	197. The City's Police Officers	197. Barber Depo. 60:11-25 to 62:1-24
20	Association (POA) solicits donations	("Q: [I]f you make a contribution do you
21	from residents in exchange for decals	get something in return? A: You get a
22	with a badge that can be placed on a	sticker. Q: What does the sticker say?
23	resident's car and a coin with a badge	A: Supporter of the Palos Verdes Police
24	that can be carried in a person's pocket	Officers Association . . . It's a square
25	if he/she is pulled over.	with our badge design in the
26		middle. Q: And are those – where
27		do people put those stickers? Do
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1	<u>Plaintiffs' Additional Material</u>	<u>Evidence in Support of Plaintiffs'</u>
2	<u>Facts:</u>	<u>Additional Material Facts:</u>
3		they put them on their cards?
4		A: We have seen them on cars.");
5		Barber Depo. 63:18-22 ("Q: How
6		about something for the highest
7		level I think called a challenge
8		coin? Have you heard of that?
9		A: Yeah, the challenge coin, that's
10		pretty popular now with law
11		enforcement agencies"); Barber
12		Depo. 64:12-17 ("Q: How much
13		money does the fund-raiser bring
14		in? A: They do it twice a year,
15		and, on average, it's – I'd say it's a
16		little less now – about \$20,000,
17		\$25,000 . . ."); Barber Depo.
18		70:21-25 71:1 ("Q: How about in
19		terms of amounts? Do you – what's
20		the largest amount that you know
21		has been donated? A: I don't know
22		the exact large – I mean largest
23		amount. Q: More than a thousand
24		dollars? A: I'm sure."); 71:5-7
25		("Q: How about someone named
26		Charlie Mowat? A: Charlie has

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	probably made a donation in the past. He's a resident.")

Issue #9: City Provides No Rational Basis For Treating Outsiders Differently.

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
198. In response to Plaintiffs' request for admission, the City did not provide any rational basis for treating outsiders differently in access to the beach and enforcement of City laws.	198. Franklin Decl. ¶44, Ex. 33, citing to City's Response to Interrogatory Nos. 1 and 2. ("Q: Do you contend that a RATIONAL BASIS exists for YOU to treat RESIDENTS of the CITY with regard to facilitating lawful, safe and secure access to LUNADA BAY? A: No..." In the follow-up interrogatory asking the City to explain the nature of its rational basis for the disparate treatment, the City responded "Not applicable."

1 DATED: July 31, 2017

HANSON BRIDGETT LLP

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